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Submitted under 20th Rule
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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~104~~. ~~758~~ 435

THE CITY OF NEW ORLEANS, PLAINTIFF IN ERROR,

vs.

THE LOUISIANA CONSTRUCTION COMPANY, LIMITED; LOUIS E. LEMARIE, ISIDORE NEWMAN, AND R. B. PLEASANTS, U. S. MARSHAL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED SEPTEMBER 15, 1888.

LAW ASSOCIATION
PHILADELPHIA

Supreme Court of the United States.

October Term, 1889.

THE CITY OF NEW ORLEANS,
Plaintiff in Error,

vs.

THE LOUISIANA CONSTRUCTION COMPANY, (Limited.)

It is stated in behalf of the Plaintiff in Error, that this case was before the Court at the last Term on motions to dismiss or affirm.

Both motions were denied. (129 U. S., 45.)

Separate briefs on the motions were filed by the Plaintiff in error.

As the brief filed by the Plaintiff in Error on the motion to affirm went fully into the merits of the case, and as it does not occur to the undersigned to add anything to that brief, it is respectfully asked that the Court will accept that brief on this submission as containing a full presentation of the case of the Plaintiff in Error on the merits.

CARLETON HUNT,
HENRY C. MILLER,
Of Counsel for the City of New Orleans.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 1104.

THE CITY OF NEW ORLEANS, PLAINTIFF IN ERROR,

vs.

THE LOUISIANA CONSTRUCTION COMPANY, LIMITED; LOUIS E. LEMARIE, ISIDORE NEWMAN, AND R. B. PLEASANTS, U. S. MARSHAL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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a *Transcript of Record.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

THE CITY OF NEW ORLEANS, 3rd Opponent and Intervener, Plaintiff in Error,
vs.
THE LOUISIANA CONSTRUCTION COMPANY, Limited, Defendants in Error.
No. 11449.

Henry C. Miller and Walter H. Rogers, Esquires, for plaintiff in error; E. Howard McCaleb, Esquire, for defendants in error.

Writ of error returnable to the Supreme Court of the United States, at the city of Washington, D. C., on the second Monday of October, A. D. 1888.

1 *Petition. Filed Sept. 30th,* 1886.

STATE OF LOUISIANA:

Civil District Court, Parish of Orleans, Div. "E."

LOUISIANA CONSTRUCTION COMPANY, Limited,
vs.
CITY OF NEW ORLEANS.
No. 18818.

To the honorable the judges of the civil district court for the parish of Orleans:

The petition of the "Louisiana Construction Company, Limited," an association duly organized under the laws of the State of Pennsylvania, having its domicile in the city of Philadelphia, in said State, of which J. Edward Addicks, also a resident and citizen of Pennsylvania, is chairman, respectfully shows—

That the City of New Orleans, a political corporation chartered and organized under the laws of the State of Louisiana, and a citizen of said State, is justly and truly indebted unto your petitioner in the full sum of fifty thousand ($50,000) dollars for this, to wit:

That by ordinance No. 682, council series, passed on the 24th
2 and promulgated on the 25th day of April, A. D. 1884, B. F. Sherman and L. E. Le Marie, their associates, transferees, successors, and assigns, were authorized to erect gas works, lay pipes and mains, and to make and vend gas for illuminating purposes in the city of New Orleans.

That the terms and conditions of said ordinance were duly accepted by the said Sherman and Le Marie, the grantees, in the manner pointed out by article ten thereof, on the 24th day of May, 1884.

That on the 24th day of July, 1884, the said Benjamin F. Sherman

and L. E. Le Marie, the grantees under said ordinance, transferred and assigned all their rights and interests therein unto the Municipal Gas Company, as per act before Joseph D. Taylor, a notary public of the city of New Orleans, and on the same day (to wit, July 24th, 1884) the Municipal Gas Company entered into a contract with the city of New Orleans, before the same notary, by which it assumed all the obligations, liabilities, and duties of said Sherman and Le Marie, the original grantees under said ordinance No. 682, council series, and bound and obligated itself to comply with the terms and provisions thereof.

That on the 24th day of July, 1884, your petitioner *bound* unto the said Municipal Gas Company the sum of twenty-five thousand ($25,000) dollars, and on the 24th day of August, 1884, the further sum of twenty-five thousand ($25,000) dollars, making a total of fifty thousand ($50,000) dollars, to enable said Municipal Gas Company to comply with its contract with the city of New Orleans and to pay to the city the consideration and bonus stipulated in
3 said ordinance for the franchises and privileges conferred thereby, and which amounts were, on said dates, respectively, paid by the said Municipal Gas Company to the city of New Orleans.

That at the time of the passage of the said ordinance No. 682, council series, the right of the city of New Orleans to grant the privileges and franchises therein enumerated was disputed—the question was then being litigated in the courts—the New Orleans Gas-Light Company asserting and claiming the exclusive right to make and vend gas lights in the city of New Orleans for the period of fifty (50) years from the 1st day of April, 1875; that said claim of the New Orleans Gas-Light Company has since been judicially recognized and enforced by the final decree of the Supreme Court of the United States in the suit entitled New Orleans Gas-Light Company, appellant, *versus* The Louisiana Light and Heat Producing Company, appellee, No. 18, of the October term of 1885 of said court, rendered December 7th, 1885, and here referred to as part hereof.

That the city of New Orleans having no right to grant the privileges and franchises contained in said ordinance No. 682, council series, the cause or consideration of said grant has totally failed, and said city is bound to restore and refund the said sum of fifty thousand ($50,000) dollars paid as a bonus for said grant.

That the contract contained in ordinance No. 682, council series, is a mere *nundum pactum*, *ultra vires* and void, incapable of being exercised or enforced by said grantees or their assigns.

That the said ordinance No. 682, council series, and the con-
4 tract aforesaid between the city of New Orleans and the Municipal Gas Company was the sale of an incorporeal right, in which the city warranted the existence of the right to lay pipes in the streets, construct gas works, manufacture and sell gas, and, said warranty having been broken, the city is bound to restore the bonus paid for said grant.

That said ordinance was enacted and said grant and contract were made in error both of fact and of law, and that the payment of said

bonus of fifty thousand ($50,000) dollars having been made through error and mistake by the said Municipal Gas Company the city is bound to restore the same.

That in the suit of Myra Clarke Gaines *vs.* City of New Orleans, No. 8825 of the docket of the United States circuit court for the eastern district of Louisiana, it was, among other things, "ordered, adjudged, and decreed that the acts of the city council of New Orleans in granting the privileges to the Municipal Gas Company to make and vend gas in New Orleans, and for that end to lay mains, pipes, and conduits and to disturb the surface of the streets, was not warranted in law and was *ultra vires*, null, and void, being an invasion of the exclusive privilege and rights of the New Orleans Gas-Light Company," and which final decision your petitioner pleads as *res adjudicata* against the city of New Orleans of all the questions herein involved.

That of said sum of fifty thousand ($50,000) dollars paid by the Municipal Gas Company to the city of New Orleans as a bonus for the grant contained in said ordinance No. 682, council series,
5 said city has expended for public improvements, repairs to draining machine, etc., during the months of November and December, 1884, and January and March, 1885, the sum of forty thousand ($40,000) dollars, leaving only ten thousand ($10,000) dollars belonging to said fund still in the hands of the city.

That the said Municipal Gas Company has on the 24th day of June, 1886, transferred, set over, assigned, and conveyed to your petitioner, The Louisiana Construction Company, Limited, J. Edward Addicks, chairman, all the rights, title, interest, and demand of the Municipal Gas Company in and to the aforesaid bonus of fifty thousand ($50,000) dollars paid to the city of New Orleans, and subrogated petitioner to all the claims, liens, privileges, and rights of action of the Municipal Gas Company arising thereon or therefor.

That petitioner fears that the city of New Orleans will part with or dispose of the aforesaid sum of ten thousand ($10,000) dollars in its possession during the pendency of this suit.

Wherefore petitioner prays the annexed affidavit and bond, considered a writ of sequestration, do issue herein according to law, ordering the sheriff to take into his possession and to keep the sum of ten thousand ($10,000) dollars, balance remaining in hands of the city out of the sum of fifty thousand ($50,000) dollars, bonus received under ordinance No. 682, council series, until after the decision of this suit.

That city of New Orleans, through its mayor, be cited to appear and answer this petition, and after due proceedings be con-
6 demned to pay unto petitioner the aforesaid sum of fifty thousand ($50,000) dollars, with legal interest on twenty-five thousand ($25,000) dollars from August 19th, 1884, until paid, with costs — be maintained and perpetuated by law. And as in duty bound, etc.

(Signed) E. HOWARD McCALEB,
Attorney for Petitioner.

Affidavit.

E. Howard McCaleb, being duly sworn, deposes and says that he is the attorney of the Louisiana Construction Company, Limited, of which J. Edward Addick is chairman, plaintiff in the above suit, and that all the allegations in the foregoing petition contained are true to the best of his knowledge and belief.

(Signed) E. HOWARD McCALEB.

Sworn and subscribed to before me this 30th day of September, A. D. 1886.

[L. S.] (Signed) E. BOUNY, *Not. Pub.*

Citation. Filed Oct. 5th, 1886.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

7 LOUISIANA CONSTRUCTION COMPANY, Limited, *vs.* CITY OF NEW ORLEANS. } No. 18818.

To the City of New Orleans, through its mayor, New Orleans:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the civil district court for the parish of Orleans, within ten days after the service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of the said court, this 4th day of October, in the year of our Lord 1886.

[L. S.] (Signed) GEO. P. CAZELAR, *Deputy Clerk.*

Return to Citation by Sheriff.

Received Oct. 5th, 1886, and on the same day, month, and year I served a copy of the within citation and accompanying petition on the city of New Orleans, through J. V. Guillotte, mayor, by leaving the same at his office, city hall, in the hands of E. L. Bower, his clerk, the said J. V. Guillotte, mayor, being absent from his office at the time of said service.

Ret. same day.

(Signed) P. A. McINTYRE, *D'y Sheriff.*

Sheriff's fees, $1.50.

8 *Petition for Removal. Filed Oct. 16th, 1886.*

Civil District Court, Parish of Orleans.

THE LOUISIANA CONSTRUCTION COMPANY, Limited,
vs.
THE CITY OF NEW ORLEANS. } No. —.

To the honorable the civil district court for the parish of Orleans, State of Louisiana:

The petition of the Louisiana Construction Company, Limited, of which T. Edward Addicks is chairman, plaintiff in the above entitled and numbered suit, respectfully shows—

That your petitioner is now and was at the time of the institution of the suit a citizen of the State of Pennsylvania, and the defendant, The City of New Orleans, is now and was at the time of the institution of this suit a citizen of the State of Louisiana.

That this suit is between citizens of different States, and the amount in controversy far exceeds the sum or value of five hundred ($500) dollars, exclusive of costs.

That your petitioner desires to remove this cause into the United States circuit court for the fifth circuit and eastern district of Louisiana, and makes and files in this court a bond, with good and sufficient security, for entering in such circuit court, on the first
9 day of its next session, a copy of the record of this suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that said suit is wrongfully or improperly transferred thereto, and also for appearing and entering special bail in such suit if special bail was originally required.

Wherefore petitioner prays this honorable court to accept said petition and bond and order the transfer of this cause to the United States circuit court for the fifth circuit and eastern district of Louisiana, as required by law.

(Signed) E. HOWARD McCALEB,
Attorney for Petitioner.

Affidavit.

E. Howard McCaleb, being duly sworn, deposes and says that he is the attorney of the Louisiana Construction Company, Limited, J. Edward Addicks, chairman, plaintiff in the above entitled and numbered suit, and that the facts stated in the foregoing petition are true, to the best of his knowledge and belief.

(Signed) E. HOWARD McCALEB.

Sworn and subscribed before me this 16th day of October, A. D. 1886.

[L. S.] (Signed) E. BOUNY, *Not. Pub.*

10 *Bond for Removal.*

Know all men by these presents that we, the Louisiana Construction Company, Limited, J. Edward Addick, chairman, principal, and L. E. Lemarie, as surety, are held and firmly bound unto the City of New Orleans and all other persons whom it may concern in the penal sum of five hundred dollars; to which payment, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

Given under our hands this 16th day of October, 1886.

[L. S.] ——— ———.

——— ———.

The conditions of this obligation are these: The said Louisiana Construction Company, Limited, J. Edward Addicks, chairman, has applied to the civil district court for the parish of Orleans, State of Louisiana, to remove a certain cause pending in said court, wherein the said Louisiana Construction Company, Limited, is plaintiff and The City of New Orleans is defendant, from the said civil district court for the parish of Orleans to the United States circuit court for the fifth circuit and eastern district of Louisiana.

Now, if said Louisiana Construction Company, Limited, J. Edward Addicks, chairman, shall enter in the said circuit court of the United States for the eastern district of Louisiana, on the first day of the next term thereof, a copy of the record of said suit, and shall
11 pay all costs that may accrue or be awarded by said circuit court if it shall hold that said suit was wrongfully or improperly removed thereto, and shall also appear and enter special bail in said circuit court in said suit if special bail was originally required therein, then this obligation shall be void; otherwise in full force.

(Signed) THE LOUISIANA CONSTRUCTION CO., LIMITED,
J. EDWARD ADDICKS, *Ch'r.*,
Pro E. HOWARD McCALEB,
Their Attorney, &c.

(Signed) L. E. LEMARIE.

Order.

Let the cause be removed into the circuit court of the United States for the fifth circuit and eastern district of Louisiana, returnable at the next term of said court to be holden in the city of New Orleans, on petitioner's giving bond in the sum of five hundred dollars.

New Orleans, October 16th, 1886.

(Signed) HENRY L. LAZARUS, *Judge.*

Proceedings in U. S. Circuit Court.

Answer. Filed November 10, 1886.

12 United States Circuit Court.

LOUISIANA CONSTRUCTION COMPANY, Limited,
vs.
CITY OF NEW ORLEANS. } No. 11449.

And now before the court comes the City of New Orleans, and for answer to the petition herein filed she denies each and every allegation in said petition contained, except such as may be hereinafter admitted, and upon trial of this cause will require strict and legal proof of such averments.

Wherefore respondent prays that plaintiff's petition may be dismissed, and that judgment may be rendered in favor of defendant and against plaintiff, with costs and general relief in the premises.

(Signed) W. H. ROGERS,
City Attorney.

(Signed) LAWRENCE O'DONNELL,
Assistant City Attorney.

Hearing and Submission.

Extract from the Minute Book, November Term, 1886.

NEW ORLEANS, TUESDAY, *December* 7, 1886.

13 Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

LOUISIANA CONSTRUCTION COMPANY, Limited,
vs.
CITY OF NEW ORLEANS. } No. 11449.

This case was called for trial, E. Howard McCaleb, Esq., appearing for plaintiff; Walter H. Rogers, city attorney, for defendant.

Whereupon the parties in interest filed a stipulation waiving the intervention of a jury, and after hearing pleadings and evidence and the arguments of counsel the cause was submitted upon the issues of fact, as well as of law, when the court took time to consider.

Judgment.

Extract from the Judgment Book.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana. November Term, 1886.

NEW ORLEANS, FRIDAY, *December* 10, 1886.

14 Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

LOUISIANA CONSTRUCTION COMPANY, Limited,
vs.
THE CITY OF NEW ORLEANS. } No. 11449.

The parties in this cause having filed a stipulation waiving the intervention of a jury and submitted the cause to the court upon the issues of fact, as well as of law, and the court having considered the evidence, and being advised in the premises, finds the issues of fact raised by the pleadings in favor of the plaintiff. It is therefore ordered, adjudged, and decreed that the plaintiff, The Louisiana Construction Company, Limited, do have and recover of and from the defendant, The City of New Orleans, the sum of fifty thousand dollars ($50,000), with 5% interest per annum, interest from the date of judicial demand, to wit, 30th day of September, A. D. 1886, until paid, and costs of suit, and that the writ of sequestration herein issued be maintained and the privilege of plaintiff be recognized upon the sum of $2,969.80, now on deposit by the defendant in the Louisiana National Bank to the credit of the Sherman and Lemarie bonus account.

Judgment rendered December 10, 1886.
Judgment signed December 16, 1886.
(Signed) EDWARD C. BILLINGS, *Judge.*

15 *3rd Opposition of City. Filed June 3d,* 1887.

To the honorable the circuit court of the United States for the fifth circuit and — district of Louisiana:

The petition of intervention and of third opposition of the city of New Orleans, a municipal corporation for the government of the said city, created by law, respectfully shows—

That the Louisiana Construction Co. and L. E. Lemarie, under the writ of execution issued by this court, on the judgment at law recovered against this petitioner in the suit of Louisiana Construction Co. *vs.* The City of New Orleans, No. 11449 of the docket of this court, the said —, has caused to be seized by the marshal of this court certain portions of ground on the public levee of this city, covered by the sheds erected by the New Orleans Sugar Shed Company for the protection from the weather of the sugar and molasses brought to this city by the commerce of this port and landed on

said levee, and said judgment creditor has also caused to be seized under said execution the right of this city to take said sheds at the expiration of the term fixed in the ordinances of this city and the contract under which said sheds were erected, and said creditor has undertaken to seize also all the rights of the city arising under said ordinances and contract with said company; and this opponent further shows that said marshal, under the direction of the
16 said judgment creditor, has advertised for sale under said execution the ground, sheds, and rights aforesaid, and avows his purpose and threatens to proceed to the said sale of said property and rights; all of which more fully appears by the advertisement by said marshal of said sale, herewith filed, made part hereof, and to which special reference is made for fuller explanation and greater certainty.

United States Marshal's Sale by United States Marshal.

In the United States Circuit Court for the Eastern District of Louisiana.

LOUISIANA CONSTRUCTION COMPANY, Limited,
vs.
THE CITY OF NEW ORLEANS. } No. 11449.

By virtue of a writ of *fieri facias*, to me directed, in the above-entitled suit I will proceed to sell to the highest bidder, on Thursday, the thirtieth (30th) day of June, 1887, at 12 o'clock m., at the main entrance to the custom-house, on Canal street, in New Orleans, the following-described property, viz:

All the right, title, and interest of The City of New Orleans, defendants herein, in and to the following property, to wit:

1. Square A, bounded by Custom-House and Bienville streets and the lines of the Louisville and the Nashville and Morgan railroads and the Sugar landing, said square measuring 121 feet 2 inches on Bienville street and Custom-House street, 340 feet 3 inches on the line of said railroads, and 340 feet 6 inches and 3 lines on the line of said Sugar landing.

2. Square B, bounded by Custom-House, Bienville —, and
17 the line of the Louisville and Nashville and Morgan railroads, said square measuring 120 feet front on Custom-House street, 80 feet 6 inches front on Bienville street, 308 feet 8 inches and 3 lines front on Front street, 153 feet front on ——, and 171 feet 10 inches and 3 lines front on the line of said railroad.

3*a*. Square C, being a triangle of land bounded by Bienville, Conti, Front streets, and the line of the Louisville and Nashville and Morgan railroads, measuring 64 feet 1 inch and 4 lines on Bienville street, 274 feet 0 inch and 3 lines on Front street, 271 feet 8 inches and 1 line on the line of said railroads, and coming to a front near the intersection of Front and Conti streets.

3*b*. Square D, bounded by Bienville, Conti, — the line of the Louisville and Nashville railroad, and the Sugar landing, measuring 92

feet 6 inches and 3 lines on each of said Bienville and Conti streets, by 330 feet 6 inches and 7 lines on the line of said railroads, and 330 feet 0 inch and 2 lines on said Sugar landing.

4. Square E, bounded by Conti, St. Louis, Clay, and Front streets, said square being pentagonal in shape and measuring 119 feet 11 inches and 7 lines on Conti street, 74 feet 2 inches and 5 lines on St. Louis street, 309 feet 8 inches and 7 lines on Clay street; and as to the two sides on Front street, 134 feet 0 inches and 5 lines as to one and 194 feet 2 inches and 7 lines as to the other.

5. All the right, title, and interest of the city of New Orleans of every kind and nature to the sheds, structures, buildings, and improvements in the said squares A, B, C, D, and E, as set forth
18 in city ordinances No. 1528, N. S., approved Aug. 14, 1869, and in the notarial act passed before W. J. Castell, notary public, on Aug. 18, 1869, between said city and F. B. Fleitas and others, said right consisting:

1. Of the option to take said sheds and structures at one-half of their appraised cash value at the expiration of twenty-five years from November 1st, 1871; the right and power to appoint appraisers as designated in said ordinances and the contracts for the purpose of determining said appraised cash value.

2. The option of extending the right to use said sheds and squares as designated in said ordinances and contracts for fifteen years subsequent to said Nov. 1st, 1896.

3. Of the right of reversion of said sheds to the city in full ownership after the expiration of said fifteen years' additional lease.

6. All the right, title, and interest of every kind and nature of the city of New Orleans in and to and arising under the contract passed before W. J. Castell, notary public, and F. B. Fleitas and others on Aug. 18, 1869, by virtue of city ordinance No. 1528, N. S., which said contract has been transferred to the New Orleans Sugar Shed Company, and the terms of which lease been modified by ordinance No. 4492, N. S., including the right to receive under said contract 10 per cent. of the gross annual receipts of said Sugar Shed Company until November 1, 1896.

Seized in the above suit.

Terms, cash.

United States marshal's office, New Orleans, May 28th.

R. B. PLEASANTS,

United States Marshal for the Eastern District of Louisiana.

19 Your opponent shows that all the ground on which is constructed the sugar sheds seized under execution in the suit of Louisiana Construction Co. *vs.* The City of New Orleans is *locus publicus*, and the ground and sheds were when seized and long prior thereto and are now exclusively devoted to public use—that is, to the purposes of commerce; that the ground forms part of the space that exists between the front line of houses of the city of New Orleans and the Mississippi river between Canal and Esplanade streets for many years after the cession of Louisiana, the city proper; that all that space of ground was *locus publicus* and dedicated to public

use at and prior to the cession of Louisiana from France in 1803, retained that character under the treaty of session, is so depicted in the maps and plans of the city, copies whereof are filed and made part hereof, and ever since has been *locus publicus*, devoted exclusively to public uses, to wit, the public street, and to receive the cargoes landed from or to be laden on board the ships, steamboats, and other vessels lying in the Mississippi river immediately in front of that space and engaged in the foreign and domestic commerce to and from this city; that the portion of said space thus used for cargoes landed or to be put on board said ships, steamboats, or vessels is and has always been known as the levee or landing, and embraces all the open space between the front of the houses and the river; that the ground on which the sugar sheds are now erected formed part of that space from the earliest period of the commerce of this city, and at and prior to the aforesaid seizure and at all times was and is now devoted to the deposit and landing
20 place of the sugar and molasses brought to this city by the Mississippi river in the steamboats and vessels engaged in that commerce; that many hundreds of thousands of hogsheads and barrels of sugar and molasses are so brought to this city annually for sale and export, and all have been at all times and are now landed and deposited on the ground or levee covered by said sugar sheds, and all that ground is absolutely essential to receive and land said sugar and molasses.

And your opponent shows that originally and for many years the sugar and molasses thus landed had no adequate covering to protect it from the weather, and to meet this want in 1869 the sugar sheds were erected over this landing place under the ordinances of the city council number 1528, and on file herein, and thus the ground covered by the sheds has continued to be and was at and prior to the seizure herein and is now used exclusively for the public purpose aforesaid of a landing and place to receive the sugar and molasses brought to this port by its foreign and domestic commerce.

And your opponent shows that the city of New Orleans, in the exercise of its power of administration over said ground and to serve the uses of commerce and to secure proper accommodation for the sugar and molasses aforesaid, by its said ordinances and contracts, agreed with the Sugar Shed Company, a corporation established by law, that said company, in consideration of erecting said sheds, should have the right for a term of years to collect charges on each hogshead and barrel of sugar and molasses landed and de-
21 posited in said sheds; that prior to the erection of the sheds the city of New Orleans exacted charges for the wharf and landing accommodations afforded such commodities; that the charges by the Sugar Shed Company under said ordinances and contracts were and are only charges of the same nature—*i. e.*, for wharf and landing accommodations, improved by said sheds, afforded the commerce of this city, and that under said contracts and ordinances the city has the right at the end of said term to take said sheds for the said purposes of commerce; all of which more fully appears by said ordinances and contracts, copies whereof are herewith filed, made

part hereof, and to which special reference is made for fuller explanation and greater certainty.

And your opponent avers and shows that, the aforesaid spaces of ground occupied by the said sheds at all times and now being *locus publicus*, dedicated to public use and in actual use by the public for the public purposes aforesaid, the city of New Orleans, having no private ownership therein and never exerting or pretending to claim any such ownership, cannot be seized on execution for the debts of the city, nor can the right or option of the city to take said sheds at the expiration of said term be seized and sold, nor can any right or claim whatever of the city in or to said ground or sheds or arising out of said ordinances or contract with said New Orleans Sugar Shed Company be seized and sold for the said debts.

Your opponent avers that the seizure and sale of said ground and sheds or alleged rights of the city in or in respect thereto proposed to be effected by the aforesaid Louisiana Construction Co. and
22 L. E. Lemarié and the marshal of this court is in violation of the right of the public and of the city of New Orleans, is an unlawful interference with the power of administration of the city over public places, an unwarranted attempt to subject public places to private ownership, a gross wrong to the city of New Orleans and to the public, and your orator is entitled to a writ of injunction to prevent said wrong and to a decree forever prohibiting and enjoining said Louisiana Construction Co. and L. E. Lemarié and the marshal of this court from proceeding any further in said seizure or *assulting* or attempting to enforce any pretended right or claim or demand based upon or arising out of said attempted seizure and sale.

Wherefore this opponent prays that this third opposition be filed in said suit of Louisiana Construction Co. *vs.* The City of New Orleans; that the plaintiff in said suit and R. B. Pleasants, United States marshal, be served with a copy hereof and cited to answer hereto; that, considering the premises, a writ of injunction issue directed to said plaintiff and to the said marshal, enjoining and prohibiting them from seizing and selling said grounds occupied by the sugar sheds and said sheds and said rights of the city to said sheds or arising out of the ordinances of the city and its contract with the New Orleans Sugar Shed Company; that said injunction be made perpetual, and said plaintiff and marshal be forever enjoined and prohibited from setting up any claim or pretension based on said seizure; that said seizure be set aside, annulled, and decreed unlawful; that said ground and sheds be recognized and decreed to be *locus publicus*, incapable of seizure and sale; that the right
23 of the city to hold and administer the same for public uses be recognized and decreed; that the seizure of said rights of the city be annulled and decreed unlawful; that the said marshal be condemned to deliver and restore to the city said grounds and sheds unlawfully seized and to desist from any interference with the right of the city thereto, and for general relief.

(Signed) HENRY C. MILLER,
W. H. ROGERS,
For Opponent.

J. V. Guillotte, being duly sworn, says that he is the mayor of the city of New Orleans; that all the facts and allegations in the foregoing petition are true.

(Signed) J. V. GUILLOTTE, *Mayor.*

Sworn to and subscribed before me this 28th May. 1887.

[SEAL] (Signed) TH. BUISSON, *Not. Pub.*

Order.

Let an order of prohibition, as prayed for in the foregoing petition, be allowed and issued upon the intervener and third opponent giving a bond, with good and solvent security, conditioned as the law requires, in the sum of sixteen thousand dollars ($16,000).

June 3, 1887.

(Signed) EDWARD C. BILLINGS, *Judge.*

24 *Amended and Supplemental Third Opposition of The City of New Orleans. Filed* 16 *August*, 1887.

To the honorable the circuit court of the United States in and for the fifth circuit and eastern district of Louisiana:

The amended and supplemental third opposition of the city of New Orleans, a political corporation charged with the administration of public places with the right to hold and apply said places exclusively to public uses, filed in the suit of The Louisiana Construction Company against The City of New Orleans, No. 11449 of the docket of this court, respectfully shows—

That under the law the city of New Orleans is vested with the administration for public purposes of the levees, streets, and all public places dedicated to public use, and is charged with the duty to hold and apply said places exclusively to such public uses.

Opponent further shows that under the execution issued upon the judgment of this court recovered in said suit by said Louisiana Construction Company against The City of New Orleans the plaintiff in execution caused to be seized and levied upon by the marshal certain portions of ground on the levee between St. Louis and Custom-House streets used as the sugar landing and upon the sheds over said spaces and upon the reversionary rights of the city in respect to said premises arising under the contract between the city and the lessees of said sheds; that, as alleged in the original opposition filed herein, all the allegations in said
25 opposition being adopted and made part of this amended opposition, the ground seized upon under said execution forms part of that space between the front row of houses of this city and the Mississippi river, and all of that space was at and before the cession of Louisiana to the United States, has been at all times since, was at the date of the aforesaid seizure and sale under said execution, and is now *locus publicus*, laid out as such upon the maps and plans of the city; was at and before the cession and at all times

since and at the date of said seizure and sale and is now dedicated to and in actual public use as a portion of the public levee or landing for the sugar and molasses brought to this port for shipment and sale; that for all that period of time hundreds of thousands hogsheads and barrels of molasses and sugar have been deposited upon said landing, and said landing has been at all times and is now still absolutely essential for said public uses, and, as is further alleged in said original opposition, the sheds erected over said ground were placed there under the contract between the city of New Orleans and the lessees of said ground simply and only to subserve said public uses and to afford adequate protection from the weather to said sugar and molasses deposited on said landing, the lessees having the right under said contract to collect the usual port duties on said sugar and molasses for the superior wharf or landing facilities of a covered landing afforded the commerce of the port, and the city to have the reversionary right of taking said sheds as its own at the termination of the lease, and on these grounds the opposition filed herein sought to arrest said seizure and sale as unlawful
26 and an illegal attempt to appropriate to private purposes the public places of the city incapable of sale or alienation, and of which the city had only the right of administration for the public benefit, and in the event said sale under said execution was effected, notwithstanding said opposition, this opponent demanded judgment annulling said sale and decreeing the restoration of the said property to the city, to be administered for the public; all of which more fully appears by the original opposition and accompanying plans marked A, B, and C, and of the plans herewith filed, to which special reference is made for fuller explanation and greater certainty.

Opponent shows that, notwithstanding said opposition, the said plaintiff in execution persisted in the said seizure and caused to be sold by the marshal under said judgment and execution, on June 30th, 1887, the spaces of ground, the sugar sheds thereon, and rights of the city aforesaid; that at the said marshal's sale Isidore Newman became the adjudicatee of the said ground, sheds, and rights of the city; that the marshal has executed and delivered to said purchaser a deed purporting to convey said property to him in accordance with said adjudication, and said purchaser now assumes to be the owner and entitled to exercise the rights of ownership over said *locus publicus*, sheds, and rights aforesaid.

Opponent shows that the location, extent, and description of said *locus publicus* seized and sold under said execution is set forth in the original third opposition herein and in the plans accompany-
27 ing the same, and also in the advertisement of said judicial sale, which sets forth the squares and dimensions and other particulars of said *locus publicus*, and which sets — also the rights aforesaid seized and sold under said execution, and said advertisement is herewith filed, made part hereof, and special reference is made to it, as well as to the original opposition and plans filed herein, for fuller explanation and greater certainty, to show the

nature, extent, and location of the said *locus publicus* and matters in dispute herein.

Opponent shows that, the aforesaid ground being *locus publicus* and the sheds and rights aforesaid being utterly incapable of sale, alienation, or of becoming private property under execution or otherwise, the city having the right only of administering the same for public uses, *that* the said seizure and sale and adjudication is wholly illegal, null, and void, and the aforesaid purchaser acquired and has no title to the ground, sheds, or rights, and opponent is entitled to have the said sale, adjudication, and asserted title of said purchaser based thereon decreed to be annulled, avoided, and of no effect.

Wherefore opponent prays leave to file this amended third opposition; that copies of this as well as of the original opposition filed herein be served on said Isidore Newman, and that he, as well as The Louisiana Construction Company, the plaintiff in said execution, and the marshal of this court be cited to answer hereto, and, after due proceedings, that judgment be rendered in the favor of opponent; that said seizure and sale and adjudication of said property to said Isidore Newman be decreed to be null, void, and
28 of no effect and he be decreed to have no title to said property; that said ground be decreed to be *locus publicus*, and that the right of the city to hold and administer the same exclusively for public uses be recognized and said grounds, sheds, and rights aforesaid be decreed incapable of seizure and sale; that opponent's right of action for damages in the premises be reserved, and for general relief.

(Signed) W. H. ROGERS,
HENRY C. MILLER,
Att'ys for City.

Order.

Let the within amended and supplemental third opposition of the city of New Orleans be filed.

Aug. 14, 1887.

(Signed) EDWARD C. BILLINGS, *Judge.*

Citation. Issued August 17th, 1887.

UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

THE LOUISIANA CONSTRUCTION COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 11449.

29 The President of the United States of America to the Louisiana Construction Company, Greeting:

You are hereby summoned to comply with the demand contained

in the original opposition and amended third opposition, of which copies accompany this citation, or to deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this seventeenth day of August, A. D. one thousand eight hundred and eighty-seven, and Independence of the United States of America the 112th year.

[SEAL.] (Signed) E. R. HUNT, *Clerk*,
By T. McC. HYMAN,
D'y Clerk.

Marshal's Return.

Rec'd Aug. 17, 1887, and on the 17 August, 1887, I served a true copy of the within original opposition and amended third opposition of the defendants herein on the Louisiana Construction Company, of this city, by handing same to L. E. Lemarié in person, who
30 accepted service of same as president of said Louisiana Construction Company.

Returned 19 Aug., 1887.

(Signed) R. B. PLEASANTS, *U. S. M'l*,
By J. M. BAKER, *D'y U. S. Mar'l.*

Citation. Issued to Isidore Newman August 17, 1887.

UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

THE LOUISIANA CONSTRUCTION COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 11449.

The President of the United States of America to Isidore Newman, Greeting:

You are hereby summoned to comply with the demand contained in the original opposition and amended third opposition, of which copies accompany this citation, or to deliver your answer to the same in the office of the clerk of the circuit court of the
31 United States, fifth circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

Witness the Honorable Morrison R. Waite, Chief Justice of the

Supreme Court of the United States of America, at the city of New Orleans, this seventeenth day of August, A. D. one thousand eight hundred and eighty-seven, and Independence of the United States of America the 112th year.

Teste:

[SEAL.] (Signed) E. R. HUNT, *Clerk*,
By T. McC. HYMAN, *D'y Clerk.*

Marshal's Return.

Rec'd Aug. 17, 1887, and on the 29th September, 1887, I served a true copy of within citation and accompanying original opposition and amended third opposition on Isidore Newman by handing the same to him in person in the city of New Orleans and leaving same in his hands.

Returned Sept. 29th, 1887.

(Signed) R. B. PLEASANTS, *U. S. M'l*,
By DAN. A. ROSE,
D'y U. S. Marshal.

32 *Citation. Issued to Marshal Aug. 17th*, 1887.

UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

THE LOUISIANA CONSTRUCTION COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 11449.

The President of the United States of America to the marshal of this court, Greeting:

You are hereby summoned to comply with the demand contained in the original opposition and amended third opposition of which copies accompany this citation or to deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this seventeenth day of August, A. D. one thousand eight hundred and eighty-seven, and Independence of the
33 United States of America the 112th year.

[SEAL.] (Signed) E. R. HUNT, *Clerk*,
By T. McC. HYMAN, *D'y Clerk.*

Marshal's Return.

Rec'd Aug. 17, 1887, and service accepted Aug. 17, 1887.
(Signed) R. B. PLEASANTS, *U. S. M'l,*
By JNO. E. LIVAUDAIS, *D'y.*

Plaintiff's Answer to Defendant's Intervention and Third Opposition Filed October 31, 1887.

United States Circuit Court, Fifth Circuit & Eastern District of Louisiana.

THE LOUISIANA CONSTRUCTION COMPANY, Limited,
vs.
THE CITY OF NEW ORLEANS. } No. 11449.

Now into this honorable court comes the Louisiana Construction Company, Limited, by their undersigned attorney, and, for the exceptions and answer to the petition of intervention and third opposition herein filed, say that opponent, The City of New Orleans,
34 is estopped by her conduct from asserting or contending that the property described and referred to in said opposition is part of the landing and levee necessary for loading and unloading steamboats and other vessels or for commerce, because by act No. 90, approved March the 30th, 1843, entitled "An act to define the power of the corporation of the city of New Orleans," and which act is still in force, the General Assembly of the State of Louisiana declared that it was "incompetent for the city of New Orleans to enact, enforce, or execute any law, ordinance, or regulation whereby any tax, duty, impost, or charge of any nature whatsoever shall be imposed upon goods, produce, wares, and merchandise of whatsoever kind or nature landed in or shipped from the corporate limits of said city;" that notwithstanding said statute and the prohibitions therein contained said opponent did, by ordinances dated August, 1869, No. 1528, N. S., and May, 1878, No. 4492, A. S., authorize the sugar shed company to charge certain sums in said ordinances for the shelter and storage of sugar and molasses, which charge could not be imposed for the use of said property if the same were, as is falsely averred, a part of the public landing; and, moreover, by art. 3 of ordinance 7079, A. S., enacted May, 1881, and section 3 of ordinance 1386, enacted August, 1885, designating the location of the wharves and levees, specially provided "that the levee shall comprise the levees already existing in the second district for Custom-House street to St. Louis street, in front of the sugar sheds;" that, having so located and designated the wharves and levees and the boundaries thereof by said ordinance, said city is estopped from asserting that the location and boundaries are different and
35 greater than those enumerated and fixed in said ordinances, and cannot now extend the same so as to include the property and squares on which said sugar sheds are situated; all which

matters and things this defendant doth aver to be true, and pleads said ordinance as an estoppel in bar to the said original and supplemental petitions of intervention and third opposition herein filed.

And for answer the Louisiana Construction Company, Limited, avers and says that it denies generally all and singular the allegations in said petition of intervention and third opposition contained; that true it is this defendant caused the clerk of this court to issue the writ of *fieri facias* upon the judgment rendered in this suit after vainly endeavoring to otherwise obtain satisfaction of said judgment, and ordered and directed R. B. Pleasants, United States marshal, to seize, advertise, and sell according to law the property described in opponent's petition to pay and satisfy said judgment, interest, and costs; that at said sale said property was adjudicated by said marshal to Isidore Newman, he being the highest and last bidder, for the price and sum of fifty thousand dollars; that all of said property seized, advertised for sale, and adjudicated to said Isidore Newman by said marshal under said writ of *fieri facias* in this suit was liable and subject to seizure and sale to pay the judgment debts and owing unto this appearer by the city of New Orleans as aforesaid.

The said five squares of ground and the right, title, and interest of the city of New Orleans of every kind and nature, the sheds, structures, buildings, and improvements on said squares, the
36 option of the city to take said sheds and structures, the option of extending the use of said sheds and structures, and all of the right, title, and interest of the city of New Orleans arising under the contract with one F. B. Fleitas and the New Orleans Sugar Shed Company is in no way or manner public property in its character or nature and has never been so treated or considered either by the State of Louisiana or by the city of New Orleans in its acts and dealings regarding said property; that said five squares of ground on which said sugar sheds are situated between Canal, Peters street, and the river is alluvion or batture which, within the last one hundred and twenty-five years, has been formed in front of the original city of New Orleans, and this alluvion has projected so far as to make the batture much broader than was needed for the purposes of commerce, and that, as said alluvion increased, the city of New Orleans from time to time divided up said batture into squares and sold it to individuals or corporations for their private use, benefit, and enjoyment; in this manner the property adjacent to and in the vicinity of said sugar sheds and which formerly formed a part of the levee and public landing is no longer used for said purposes of commerce as a levee or landing; that the New Orleans Sugar Shed Company, under its contract with the city of New Orleans, has the exclusive possession and control of said squares of ground; that under the present charter (act No. 20 of 1882, sec. 14) the city of New Orleans is authorized "to lay off and sell in lots or squares so much of the batture from time to time as may not be required for public purposes," and the same authority existed and was exercised by the city of New Orleans under her previous charters.

37 That said five squares of ground on which said sugar-shed warehouses are situated constitute no part of the public land-

ing upon the levee of the city of New Orleans; that, on the contrary, the sugar shed situated on the square nearest the levee or landing is distant from the outer edge of the steamboat wharf 2 hundred and eight feet four inches and four lines,. measured from the corner of said sugar shed on Custom-House street, and one hundred and twenty-eight feet and eight inches and four lines, measured along the prolongation of Bienville street to the outer edge of the steamboat wharf farthest from the river, and the remainder of said squares are at a much greater distance from the wharf or landing upon which vessels discharge their cargoes. There is a street intervening between the sugar sheds nearest the wharf and the wharf itself or public landing, and the city of New Orleans in locating her wharves and levees had fixed the same as bounded by " the street in front of the sugar shed."

That all of the sugar and molasses received in the city of New Orleans by railway is landed and deposited at other places than at the wharf in front of said sugar sheds, and a large quantity of sugar and molasses landed on the levee in front of said sugar sheds by steamboats and other water craft is rapidly removed therefrom by wagons, drays, and other vehicles to other warehouses than those erected by said New Orleans Sugar Shed Company on the squares described in opponent's petitions. By ordinance of the city of New Orleans no produce, &c., is allowed to remain on the wharves or landings for a longer period than forty-eight hours after
38 being landed or discharged from any vessel or water craft.

That the warehouses or sugar sheds erected on said squares by said sugar shed company are used exclusively for the profit and gain of said company and are not dedicated for public purposes to a greater extent than any other warehouses in the city of New Orleans; that sugar and other molasses factors and other receivers of sugar and molasses at this port have often complained and remonstrated with the officers and government of the city of New Orleans against the charges and exactions of the New Orleans Sugar Shed Company and the monopoly or exclusive privilege attempted to be exercised by said sugar shed company and of the discrimination made in favor of said company by the city of New Orleans, but all to no purpose.

That the city of New Orleans receives no benefit and derives no gain whatever from the contract made with the sugar shed company; that as regards the ten per cent. gross receipts agreed to be paid by the sugar shed company for the portion of the year 1887, which was also seized by garnishment process in this suit, the same does not constitute a part of the public revenues of the city not liable to seizure, but, on the contrary, are seizable. The sugar shed company has long since ceased to pay, and the city of New Orleans does not now exact, the ten per cent. bonus stipulated in the contract, and the same is no longer put upon the budget of revenues of said city.

And finally this defendant denies that any of the property seized at its instance aforesaid is *loci publici* or *hors de commerce* or
39 in any way exempt from and not subject to seizure and sale; on the contrary, it avers and charges, and so the fact is, that

all of said property is and was liable and subject to seizure and sale to pay the judgment aforesaid held and owned by this appearer against the city of New Orleans; that none of said property forms a part of the wharves or landings, nor is it in any way necessary for purposes of commerce or in any manner dedicated to public use.

Wherefore this appearer prays that the petition of intervention and third opposition herein filed be dismissed and opponent's demand rejected with costs and for general relief.

(Signed) E. HOWARD McCALEB,
Attorney for Louisiana Construction Co., Limited.

Answer of Reuben B. Pleasants, U. S. Marshal, to Intervention and Third Opposition. Filed October 31, 1887.

United States Circuit Court, Fifth Circuit & Eastern District of Louisiana.

LOUISIANA CONSTRUCTION COMPANY, Limited,
vs.
THE CITY OF NEW ORLEANS. } No. 11449.

Now comes Reuben B. Pleasants, United States marshal in
40 and for the eastern district of Louisiana, by his undersigned attorney, and for answer to the petition of intervention and third opposition of the city of New Orleans, herein filed, says—

1st. That he denies all and singular the allegations in said petitions contained, except as may be so far hereinafter specially admitted.

2nd. He admits that, under the instructions and directions of plaintiff, he did, in his official capacity as United States marshal, seize, advertise for sale, adjudicate, and sell the property described in opponent's petition to pay and satisfy the judgment and writ of *fieri facias* issued thereon in this suit; that at said sale the said property was adjudicated to Isidore Newman, he being the highest and last bidder, for the price and sum of fifty thousand dollars. In all his acts and doings regarding said matter, the seizure of said property, the advertisement and sale thereof this defendant was performing his official duty as United States marshal under instructions of the plaintiff herein, its officers, agents, and attorneys, and in obedience to the writ of *fieri facias* issued on the judgment rendered in this cause; therefore he is in no manner liable or responsible to said intervener and opponent for his official acts and doings aforesaid. and he disclaims all interest in the judgment rendered in this suit.

Third. That this defendant believes the facts to be as stated in the answer of plaintiff to the said petitions of intervention and third opposition herein filed, and that the property mentioned
41 and described in the intervention and third opposition of the city of New Orleans was subject to and not exempt from seizure and sale, nor is the same necessary for purposes of commerce for the city of New Orleans, and all of which this defendant submits to this honorable court.

Wherefore he prays to be hence dismissed with costs, and that the demand of intervener and third opponent be rejected with costs and for general relief.

(Signed) E. HOWARD McCALEB,
Attorney for Reuben B. Pleasants, United States Marshal.

Answer of L. E. Lemarié to Intervention and Third Opposition. Filed Oct. 31, 1887.

United States Circuit Court, Fifth Circuit, Eastern District of Louisiana.

LOUISIANA CONSTRUCTION COMPANY, Limited,
vs.
CITY OF NEW ORLEANS. } No. 11449.

Now into this honorable court comes Louis E. Lemarié, made defendant to the petition of intervention and third opposition herein filed by the city of New Orleans, who for answer to said petition says that he denies generally the allegations in said petition contained, and says—

That he is in no manner personally interested in the judg-
42 ment rendered in this suit nor in the seizure and sale of the five squares of ground and other property claimed by intervener and third opponent as exempt from seizure and sale; that all of his connection with said seizure and sale under the writ of *fieri facias* issued on the judgment herein rendered, all his acts and doings relating thereto, were as agent and attorney-in-fact of The Louisiana Construction Company, Limited, of Philadelphia, Pennsylvania, plaintiff in said suit, and under their instructions, orders, and directions; that, having acted solely in a representative capacity as agent and mandatory of plaintiff in this suit, he cannot be sued or held responsible to intervener and opponent; that the facts are as stated in the answer filed by said Louisiana Construction Company, Limited, to the said petitions of intervention and third opposition of the city of New Orleans, and which he hereby adopts and reiterates.

Wherefore he prays to be dismissed and that intervener and opponent's demand be rejected with costs, and for all general relief.

(Signed) E. HOWARD McCALEB,
Attorney for Louis E. Lemarié.

Empanelling of Jury, Hearing, and Continuance.

Extract from the Minute Book, November Term, 1887.

43 NEW ORLEANS, SATURDAY, *December* 17, 1887.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

LOUISIANA CONSTRUCTION COMPANY
vs.
CITY OF NEW ORLEANS. } No. 11449.

This cause came on this day to be heard on the intervention and third opposition of the city of New Orleans—E. Howard McCaleb, Esq., appearing for defendants in opposition; Nicholls & Carroll for Isidore Newman, adjudicatee; Walter H. Rogers and Henry C. Miller for the intervener and third opponent—when the following-named jurors were called and sworn to well and truly try the issue joined herein, to wit: 1, Thos. J. Mackie; 2, W. S. Clayton; 3, S. Ternoir; 4, I. F. Kopp; 5, R. B. Cenas; 6, R. Nixon; 7, Jas. Champagne; 8, Chas. A. Harrison; 9, V. H. Campbell; 10, Jno. F. Fink; 11, Jos. O. Lainez; 12, Edw'd Morosini, and Thos. J. Mackie was appointed foreman of the said jury. After hearing pleadings and evidence in part the court ordered the cause to go over until Saturday, January 7, 1888; and thereupon the court instructed the jurors to permit no one to converse with them concerning this cause.

44 *Hearing and Verdict.*

Extract from the Minute Book, November Term, 1887.

NEW ORLEANS, THURSDAY, *March* 8, 1888.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

THE LOUISIANA CONSTRUCTION COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 11449.

On intervention & 3rd opposition of the city of New Orleans.

This cause, as continued from yesterday, was this day resumed, and, the counsel for the respective parties as well as the jurors empanneled in the cause being all present, the trial was proceeded with. After receiving a charge from the court the said jury did then and there, in open court, through their said foreman, render and deliver the following verdict, viz:

We, the jury, find for the plaintiff in the writ and against the 3rd opponent, The City of New Orleans.
8 March, 1888.

THOS. G. MACKIE, *Foreman.*

Whereupon it was ordered that the said verdict be recorded, and it is done accordingly.

45 *Motion of the City of New Orleans for a New Trial. Entered and Filed March* 12, 1888.

U. S. Circuit Court.

THE LOUISIANA CONSTRUCTION CO.
vs.
THE CITY OF NEW ORLEANS. } No. 11449.

On motion of W. H. Rogers and H. C. Miller, counsel for the city of New Orleans, it is ordered that plaintiff show cause, on Saturday, the 24th day of March, 1888, at 11 o'clock, why a new trial should not be granted in this cause, upon the grounds—

1st. That it was shown that the spaces covered by the sugar sheds were *locus publicus* and not liable to seizure.

2nd. That the location of the sugar sheds thereon under the ordinances and lease did not make said sheds or reversionary right of the city therein liable to seizure.

3rd. That the judgment of the jury is contrary to law and evidence.

Marshal's Return.

Received Mar. 12, 1887, by the U. S. marshal and on the 13 day of March, 1888, I served a true copy of the within motion on E. H. McCaleb by handing the same to him in person.

(Signed) R. B. PLEASANTS,
U. S. Marshal,
By DAN. A. ROSE,
D'y U. S. Marshal.

46 *New Trial Refused.*

Extract from the Minute Book, November Term, 1888.

NEW ORLEANS, SATURDAY, *March* 31, 1888.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

LOUISIANA CONSTRUCTION COMPANY
vs.
CITY OF NEW ORLEANS. } No. 11449.

This cause came on to be heard on the motion for a new trial herein, filed by The City of New Orleans, intervener and third opponent, and was submitted by the counsel for the parties, respectively; whereupon and upon consideration thereof, it is ordered that the said application for a new trial be refused and that the verdict and judgment herein remain undisturbed.

Bill of Exceptions. Filed 16 *March*, 1888.

U. S. Circuit Court.

THE LOUISIANA CONSTRUCTION CO.
vs.
THE CITY OF NEW ORLEANS. } No. 11449.

47 Be it remembered that on this 8th day of March, 1888, on the trial of this cause, it being proved that the spaces of ground on which the sugar sheds are erected were, at the date of the seizure and sale of said spaces and sheds, and are between the front row of houses of the city of New Orleans and the Mississippi river, as shown by the plan "D," in evidence and hereto annexed and made part of this bill; and it being further shown that all the ground between the front row of houses of the city and the river was delineated as *locus publicus* in the plans of the city extant at and before the cession of Louisiana to the United States, as appears by the copies of the plans of 1728, 1731, and 1812, copies whereof are attached to and made part of this bill, marked A, B, and C; and that the said spaces covered by said sheds in 1869 and for years previous being in actual and exclusive public use as the levee or landing place for the sugar and molasses brought to this city in steamboats and other vessels, there being no covering for said sugar and molasses when landed, that then, in 1869, the city of New Orleans, in accordance with the ordinance of the city council, leased the said spaces of ground for a term of twenty-five years, the lessees to erect said sheds thereon with the right to collect certain charges upon the sugar and molasses brought to this city in steamboats and other vessels and received under said sheds, the city to receive a bonus from the lessees from and out of the dues aforesaid and the sheds to revert to the city at the end of said lease, as shown by the said ordinances and lease hereto attached and marked E and F; and it being shown that the said les-

48 sees accepted said lease, erected said sheds, and have been in possession ever since under said lease; and it being shown that save and except said sheds the ground where they are erected, between the front row of houses and the river, is open and unobstructed as it was before and at the date of the erection of said sheds; that save said sheds no buildings of any kind have ever been put on said spaces, and that the said spaces and sheds were at the date of the seizure and sale thereof under plaintiff's execution and at all times since their erection exclusively used to receive the sugar and molasses landed from steamboats and other vessels, as provided in said ordinances and lease; and testimony being offered by the third opponent tending to prove that said spaces were essential to the public use for the commerce of the port to receive said sugar and molasses, and it being in evidence that under the execution issued in this case to satisfy the judgment of this court, in favor of plaintiffs and against the city of New Orleans, for $50,000 and interest, the United States

marshal seized and on the 30th of June, 1887, sold to Isidore Newman, for the price of fifty thousand dollars, the aforesaid spaces of ground and right of reversion to said sheds of the city and other rights of the city arising under said lease, as appears by the advertisement of sale and marshal's return, copies whereof, marked G and H, are attached and made part of this bill; and there being also testimony offered by the Louisiana Construction Company, plaintiff in the writ, tending to show that the spaces seized in this suit
49 were not necessary for public uses and were not used for the landing of the sugar and molasses; and there being offered also by the said plaintiff the ordinances of the city council as follows, to wit: Nos. 7079, 1528, 4492, 1386, 2053, 1528, 6996, 7444, 7615, charter of the sugar shed company, ordinance 7615, and said ordinances, hereto attached and made part of this bill, being offered to show that the city exercised no control over said sugar sheds and other purposes set forth in the ordinances; and there being also testimony offered by said plaintiff in the writ tending to show that the original ground depicted in the old plans of this city has been increased by alluvion added by the Mississippi river, and it was conceded by both parties to the controversy that the spaces occupied by the sugar sheds as well as the vacant space between the sugar sheds and the wharves are alluvion; and the counsel for plaintiff in the writ having also offered to show the location of said sugar sheds by the map hereto annexed and marked I, hereto attached and made part of this bill, and the case being closed and the jury about to retire, thereupon the counsel for The City of New Orleans, the third opponent and intervener, requested the court to charge the jury that the character of *locus publicus* impressed upon ground within the city of New Orleans devoted to public use cannct be changed except by an act of the Legislature of the State authorizing said change, and hence that the city of New Orleans without such legislative authority had no power to change the character of a *locus publicus* and thereby make said *locus publicus* subject to seizure and sale on execution for the debts of the city.

50 But the court refused to charge as requested, but did charge as follows:

"The jury are instructed as matters of law—

"1st. The space upon which the sugar sheds, the reversion of the title to which has been seized under a writ of *fieri facias* in this case, was, prior to August 14th, 1869, upon the undisputed facts, established a *locus publicus*.

"2nd. That by the undisputed evidence it is established that said space was a portion of what is called the 'batture,' which is the alluvial land between that portion of the city of New Orleans and the Mississippi river, and was a *locus publicus* at the time when Louisiana was acquired by the United States.

"There is no doubt of the correctness of the general proposition that a public place is inalienable except by the sovereign, but a public place which is a portion of the batture, according to the well, settled jurisprudence of this State, has a distinctive quality impressed upon it and may be withdrawn from the use of the public by the

city. This qualification is seen to be a public necessity when we consider that by the action of the vast stream which half encircles the city the levees may be so widened as that, unless a portion of them were used for buildings and the inhabited city extended over them, the city itself would possibly be left at an inconvenient distance from the river. Accordingly we find, both in the decisions of the highest tribunal of the State — in the act of the Legislature, a clear recognition of the authority of the city to withdraw from
51 the public use any portion of the batture which it deems no longer necessary to be held for that purpose.

"Therefore the court instructs you that it was lawful for the city of New Orleans to withdraw the said space from the public and to make it private proverty while it was a *locus publicus*. The fee was in the city and the use was in the public, and the question of fact for you to decide is whether the city did not, by the contract or lease of the date of August 14th, 1869, withdraw said space from the public use as being no longer necessary for the public.

"It is to be observed that the said contract gives to the grantee or lessee 'the exclusive right of using the public spaces,' and gives to him 'undisturbed possession of said public spaces and the sheds thereon erected.' Said sheds are to be for the purpose of storing sugar and molasses. There is no condition or requirement in said grant or lease which requires the said grantee or lessee to receive up to the capacity of the sheds the sugar and molasses of any person offering or which prevents him from any degree of discrimination—*i. e.*, he may store the products of one man and refuse those of another, although his store is not full.

"The contract reserves a royalty as a rent.

"The possession thus granted is to continue for the period of twenty-five years.

"The contract protected the public by the provision that 'the sheds should not be located more than one hundred and fifty feet to the present wooden work or wharves.'

52 "If you find this contract was executed by the city of New Orleans and was accepted by the grantee or lessee, and that he went into possession at the time of its execution and ever since remained under it in possession, and there is no dispute about these facts, then the court instructs you there has been such a change in the destination of the property in question, such a withdrawal of it from the public, as makes it property held by the city for its own use and not that of the public, and makes its reversion liable to seizure on the part of a creditor of the city of New Orleans, and your verdict would be for the plaintiff in the writ and against the intervener and 3rd opponent."

To which refusal of the court to charge as requested, and to that portion conceived to be different from the instructions requested, said portion being as follows, to wit:

"There is no doubt of the correctness of the general proposition that a public place is inalienable except by the sovereign; but a public place which is a portion of the batture, according to the well-

settled jurisprudence of this State, has a distinctive quality impressed upon it and may be withdrawn from the use of the public by the city. This qualification is seen to be a public necessity when we consider that by the action of the vast stream which half encircles the city the levees may be so widened as that, unless a portion of them were used for buildings and the inhabited city extended over them, the city itself would possibly be left at an inconvenient distance from the river. Accordingly we find, both
53 in the decisions of the highest tribunal of the State and in the act of the Legislature, a clear recognition of the authority of the city to withdraw from the public use any portion of the batture which it deems no longer necessary to be held for that purpose."

"Therefore the court instructs you that it was lawful for the city of New Orleans to withdraw the said space from the public and to make it private property while it was a *locus publicus*. The fee was in the city and the use was in the public, and the question of fact for you to decide is whether the city did not, by the contract or lease of the date of August 14th, 1869, withdraw said space from the public use as being no longer necessary for the public.

"It is to be observed that the said contract gives to the grantee or lessee 'the exclusive right of using the public spaces,' and gives to him 'undisturbed possession of said public spaces and the sheds thereon erected.' Said sheds are to be for the purpose of storing sugar and molasses. There is no condition or requirement in said grant or lease which requires the said grantee or lessee to receive up to the capacity of the sheds the sugar and molasses of any person offering or which prevents him from any degree of discrimination—*i. e.*, he may store the products of one man and refuse those of another, although his store is not full.

"The contract reserves a royalty as a rent.

"The possession thus granted is to continue for the period of twenty-five years.

"The contract protected the public by the provision that
54 'the sheds should not be erected nearer than one hundred and fifty feet to the present wooden work or wharves.'

"If you find this contract was executed by the city of New Orleans and was accepted by the grantee or lessee, and that he went into possession at the time of its execution and ever since remained under it in possession, and there is no dispute about these facts, then the court instructs you there has been such a change in the destination of the property in question, such a withdrawal of it from the public as makes it property held by the city for its own use and not that of the public, and makes its reversion liable to seizure on the part of a creditor of the city of New Orleans, and your verdict would be for the plaintiff in the writ and against the intervener and 3rd opponent."

The counsel for the City of New Orleans, the 3rd opponent and intervener, then and there excepted—tendered this bill of exceptions for signature, which is granted, signed, and sealed accordingly this 8th March, 1888, at the foot of this bill.

The judge, in allowing this bill of exceptions, states:

The question at issue, as appears by the pleadings, was whether the space occupied by the sugar sheds and the right to it, subject to the lease specified in the instructions given by the court to the jury, were liable to seizure and sale under a writ of *fieri facias* sued out by a judgment creditor of the city of New Orleans.

The testimony given at the trial is correctly stated in this bill.

55 The counsel for the intervener and third opponent asked the court to give the instructions presented in the requests as stated in the bill. The court refused these instructions in the manner and form as requested, except so far as embodied in those which were given as stated in the bill.

A bill of exceptions was taken to those given and to the two propositions contained in the instructions given, as hereinafter stated.

The questions presented by the exceptions are two:

1st. Has the city of New Orleans the power lawfully to withdraw any portion of the batture from public use, change its destination, and make it private property?

2nd. If yes, did the city exercise this power and make the space in question private property by the execution of the lease for twenty-five years and the grant of possession under it?

Both these questions the court, in its instructions, answered in the affirmative, and the bills of exception present those two affirmative propositions so given as instructions to the jury.

And since the matters herein stated do not appear by record this bill is allowed and signed.

(Signed) EDWARD C. BILLINGS, *Judge.*

And be it remembered that on this 8th March, 1888, on the trial of this cause, the proof being made and the testimony offered and the case closed, as stated above, the counsel for The City

56 of New Orleans, the intervener and third opponent, then and there requested the court to charge the jury that if they find from the evidence that the four squares or spaces of ground involved in this controversy, seized and sold to Isidore Newman by the United States marshal under the execution in the suit of The Louisiana Construction Company *vs.* The City of New Orleans, was *locus publicus* as a portion of the public levee of this city, dedicated to the common use of the inhabitants of the city to serve the public purposes of a levee and landing place for the sugar and molasses brought to this port by steamboats and other vessels navigating the Mississippi river; and if the jury further find that in 1869 the city of New Orleans leased said spaces for the term of twenty-five years under ordinances of the city council and the contract with the lessees that they should erect over said spaces sugar sheds for the accommodation and protection of the aforesaid sugar and molasses landed from said steamboats and other vessels, the lessees to have the right to collect dues upon the sugar and molasses deposited under said sheds for and in consideration of the accommodation and protection afforded by said sheds to said sugar and molasses, the city

to be paid a percentage of said dues annually and the sheds to revert and belong to said city at the end of said lease, as appears by said ordinances and contract in evidence; and if the jury find that said sheds were so constructed and at and before the date of said adjudication, ever since the year 1869, the said spaces of ground and sheds were used for said purposes and for no other purposes,
57 then the jury are instructed that the erection of said sheds upon and the use of said spaces as provided by said contract and ordinances did not change the character of said spaces as part of the public levee or *locus publicus*, and made said spaces and sheds over them liable to seizure and sale on execution for the debts of the city, and any such seizure and adjudication was illegal and passed no title to the purchaser.

But the court refused so to charge, but did charge as hereinbefore set forth; to which refusal of the court to charge as requested and to that portion of the charge conceived to be variant from the instructions requested, which portion is as follows—that is to say:

"There is no doubt of the correctness of the general proposition that a public place is inalienable, except by the sovereign; but a public place which is a portion of the batture, according to the well-settled jurisprudence of this State, has a distinctive quality impressed upon it and may be withdrawn from the use of the public by the city. This qualification is seen to be a public necessity when we consider that, by the action of the vast stream which half encircles the city, the levees may be so widened as that, unless a portion of them were used for buildings and the inhabited city extended over them, the city itself would possibly be left at an inconvenient distance from the river. Accordingly we find, both in the decisions of the highest tribunal of the State and in the act of the Legislature, a clear recognition of the authority of the city to withdraw
58 from the public use any portion of the batture which it deems no longer necessary to be held for that purpose."

"Wherefore the court instructs you that it was lawful for the city of New Orleans to withdraw the said space from the public and to make it private property. While it was a *locus publicus*, the fee was in the city and the use was in the public, and the question of fact for you to decide is whether the city did not, by the contract or lease of the date of August 14th, 1869, withdraw said space from the public use as being no longer necessary for the public."

"It is to be observed that the said contract gives to the grantee or lessee 'the exclusive right of using the public spaces' and gives to him 'undisturbed possession of said public spaces and the sheds thereon erected;' said sheds are to be for the purpose of storing sugar and molasses. There is no condition or requirement in said grant or lease which requires the said grantee or lessee to receive up to the capacity of the sheds the sugar and molasses of any person offering or which prevents him from any degree of discrimination, *i. e.*, he may store the products of one man and refuse those of another, although his store is not full."

"The contract reserves a royalty as a rent."

"The possession then granted is to continue for the period of twenty-five years."

"The contract protected the public by the provision that the sheds should not be located nearer than one hundred and fifty feet to the present wooden work or wharves."

59 "If you find this contract was executed by the city of New Orleans and was accepted by the grantee or lessee, and that he went into possession at the time of its execution and has since remained under it in possession, and there is no dispute about these facts, then the court instructs you there has been such a change in the destination of the property in question, such a withdrawal of it from the public, as makes it property held by the city for its own use and not that of the public, and makes its reversion liable to seizure on the part of a creditor of the city of New Orleans, and your verdict would be for the plaintiff in the writ and against the intervener and 3rd opponent."

The counsel for the 3rd opponent and intervener then and there excepted, tendered this bill of exceptions for signature, which is granted, signed, and sealed accordingly this 8th March, 1888.

The judge, in allowing this bill of exceptions, states:

The question at issue, as appears by the pleadings, was whether the space occupied by the sugar sheds and the right to it, subject to the lease specified in the instructions given by the court to the jury, were liable to seizure and sale under a writ of *fieri facias* sued out by a judgment creditor of the city of New Orleans.

The testimony given at the trial is correctly stated in this bill.

The counsel for the intervener and third opponent asked the court to give the instructions presented in the requests as
60 stated in the bill, which are stated in the bill. The court refused these instructions in the manner and form as requested, except so far as embodied in those which were given, as fully set forth in the bill.

A bill of exceptions was taken to those given and to the two propositions contained in the instructions given, as hereinafter stated.

The questions presented by the exceptions are two:

1st. Has the city of New Orleans the power lawfully to withdraw any portion of the batture from public use, change its destination, and make it private property?

2nd. If yes, did the city exercise this power and make the space in question private property by the execution of the lease for twenty-five years and the grant of possession under it?

Both these questions the court, in its instructions, answered in the affirmative, and the bill of exceptions present those two affirmative propositions so given as instructions to the jury.

And since the matters herein stated do not appear by record this bill is allowed and signed.

(Signed) EDWARD C. BILLINGS, *Judge.*

And be it remembered that on this 8th March, 1888, the proof being made, the testimony offered, and the case closed, as above stated, and the jury about to retire, the counsel for The City of New Orleans, the 3d opponent and intervener, requested the court to charge the jury that if they find from the evidence that the
61 four squares or spaces of ground involved in this controversy, seized and adjudicated to Isidore Newman by the United States marshal under the execution in the suit of The Louisiana Construction Company *vs.* The City of New Orleans, was *locus publicus* as a portion of the public levee of this city, dedicated to the common use of the inhabitants of the city to serve the public purposes of a levee and landing place for the sugar and molasses brought to this port by steamboats and other vessels navigating the Mississippi river; and if the jury further find that in 1869 the city of New Orleans leased said spaces for the term of twenty-five years under ordinances of the city council and the contract with the lessees that they should erect over said spaces sugar sheds for the accommodation and protection of the aforesaid sugar and molasses landed from said steamboats and other vessels, the lessee to have the right to collect charges upon the sugar and molasses deposited under said sheds for and in consideration of the accommodation and protection afforded by said sheds to said sugar and molasses, the city to be paid a percentage of said dues annually and the sheds to revert and belong to said city at the end of said lease, as appears by the said ordinances and contract in evidence, and copies of which are herewith filed, marked E, F, made part of this bill; and if the jury find that said sheds were so constructed and at and before the date of said adjudication, ever since the year 1869, the said spaces of ground and sheds were used for said purposes and for no other purposes, then the jury are instructed that the aforesaid right of reversion
62 of the said city to said sheds erected over said *locus publicus* was not liable to be seized and sold on execution for the debts of the city, and the seizure and adjudication of said right of reversion was illegal and passed no title to the purchaser.

But the court refused so to charge, but did charge as is hereinbefore set forth; to which refusal of the court to charge as requested and to that portion of the — given conceived to be variant from the instructions requested, said portion being as follows—that is to say:

"There is no doubt of the correctness of the general proposition that a public place is inalienable, except by the sovereign; but a public place which is a portion of the batture, according to the well-settled jurisprudence of this State, has a distinctive quality impressed upon it and may be withdrawn from the use of the public by the city. This qualification is seen to be a public necessity when we consider that, by the action of the vast stream which half encircles the city, the levees may be so widened as that, unless a portion of them were used for building and the inhabited city extended over them, the city itself would possibly be left at an inconvenient distance from the river. Accordingly we find, both in the decisions

of the highest tribunal of the State and in the act of the Legislature, a clear recognition of the authority of the city to withdraw from the public use any portion of the batture which it deems no longer necessary to be held for that purpose."

"Wherefore the court instructs you that it was lawful for
63 the city of New Orleans to withdraw the said space from the public and make it private property. While it was a *locus publicus*, the fee was in the city andt he use was in the public, and the question of fact for you to decide is whether the city did not, by the contract or lease of the date of August 14th, 1869, withdraw said space from the public use as being no longer necessary for the public."

"It is to be observed that the said contract gives to the grantee or lessee 'the exclusive right of using the public spaces' and gives to him 'undisturbed possession of said public spaces and the sheds thereon erected;' said sheds are to be for the purpose of storing sugar and molasses. There is no condition or requirement in said grant or lease which requires the said grantee or lessee to receive up to the capacity of the sheds the sugar and molasses of any person offering, or which prevents him from any degree of discrimination—*i. e.*, he may store the products of one man and refuse those of another, although his store is not full."

"The contract reserves a royalty as a rent."

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"The contract protected the public by the provision that the sheds should not be located more than one hundred and fifty feet to the present wooden work or wharves."

"If you find this contract was executed by the city of New Orleans and was accepted by the grantee or lessee, and that he went
64 into possession at the time of its execution and has since remained under it in possession, and there is no dispute about these facts, then the court instructs you there has been such a change in the destination of the property in question, such a withdrawal of it from the public, as makes it property held by the city for its own use and not that of the public, and makes its reversion liable to seizure on the part of a creditor of the city of New Orleans, and your verdict would be for the plaintiff in the writ and against the intervener and 3rd opponent."

The counsel for The City of New Orleans, the third opponent and intervener, then and there excepted, tendered this bill of exceptions for signature, which is signed and sealed accordingly on this 8th day of March, 1888.

The judge, in allowing this bill of exceptions, states:

The question at issue, as appears by the pleadings, was whether the space occupied by the sugar sheds and the right to it, subject to the lease specified in the instructions given by the court to the jury, were liable to seizure and sale under a writ of *fieri facias* sued out by a judgment creditor of the city of New Orleans.

The testimony given at the trial is correctly stated in this bill.

The counsel for the intervener and third opponent asked the court to give the instructions presented in the requests as stated in the bill, which are stated in the bill. The court refused these instructions in the manner and form as requested, except so far as
65 embodied in those which are given, as set forth in full in the bill.

A bill of exceptions was taken to those given and to the two propositions contained in the instructions given, as hereinafter stated.

The questions presented by the exceptions are two:

1st. Has the city of New Orleans the power lawfully to withdraw any portion of the batture from public use, change its destination, and make it private property?

2nd. If yes, did the city exercise this power and make the space in question private property by the execution of the lease for twenty-five years and the grant of possession under it?

Both these questions the court, in its instructions, answered in the affirmative, and the bill of exceptions present those two affirmative propositions so given as instructions to the jury.

And since the matters herein stated do not appear by record this bill is allowed and signed.

(Signed) EDWARD C. BILLINGS, *Judge.*

Agreement on Bill of Exceptions.

It is agreed that all statutes of the State *being* in this case bearing on the subject shall be treated as before the court on the trial.

(Signed) H. C. MILLER, *For Opp't.*
E. HOWARD McCALEB,
Att'y for Pl'ff.

(Here follow diagrams marked pp. 66, 67, 68, & 69.)

70 E.

Ordinance No. 7079. *Filed with and Made Part of Bill of Exceptions.*

Article (1). Be it ordained, That the administrator of commerce shall, after the enactment of this ordinance and after having given ten days' notice in the official journal that he will receive at his office sealed proposals for their sale, *shall* adjudicate, as provided for in section 26, and in accordance with the stipulation hereinafter contained, the revenues of the wharves and levees of the city of New Orleans, collectible at the rates as may be fixed upon all ships, vessels, steamships, steamboats, barges, flat-boats, and other water crafts of any and every description whatever, for the term of five years, commencing on the 29th day of May, 1881, and ending with the 28th day of May, 1886, upon the terms and conditions hereinafter set forth.

Art. 2 (2). That the wharves and levees, the revenues of the same to be sold under this ordinance, shall comprise the wharves already constructed and existing in the first, second, third, and fourth districts of the city of New Orleans, from Toledano street to the lower limits of the city, which is the lower line of the United States barracks, excepting therefrom all ferry and nuisance wharves and all wharves granted to the New Orleans Pacific Railway Company, as well as the wharf granted to the New Orleans Elevator Company, until such time as present franchise expires; and excepting generally all such wharves or portions of wharves and of
71 the river bank the exclusive use of which may now be enjoyed by private individuals or corporations under existing grants or leases until such time as said grants or leases may expire, after which time said lessee shall take charge of said elevator wharf on same conditions as other wharves.

All United States Government vessels shall be exempt from payment of wharfage dues.

Art. 3 (3). That the levee shall comprise the levees already existing in the first, second, third, and fourth districts of the city of New Orleans, extending from the river to the line of the streets fronting the river—that is to say, in the fourth district, from Toledano to Adele streets, Water street, and from Adele street to Felicity road, Peters street; in the first district, from Felicity road to the junction of Peters with Water streets, Peter street; from the junction of Peters with Water streets to Terpsichore street, Water street; from Terpsichore to Calliope streets, Pilie street; from Calliope to Julia streets, New street; from Julia street to Girod street, Pilie street; from Girod to Poydras street, Water street; and from Poydras to Canal streets, Delta street; in the second district, from Canal to Custom-House street, in front of the railroad depot; Custom-House to St. Louis street, the street in front of the sugar sheds; from St. Louis to St. Ann streets, Clay street; from St. Ann to Dumaine streets, the street in front of the meat market, and from Dumaine to Barracks streets, the Mobile and Texas railroad tracks; and in the third district, from Marigny to Mandeville streets, the street in front of the Marigny stores, and from Mandeville to the
72 lower limits of the city, Peters street.

Art. 4 (4). That the person or persons to whom shall be adjudicated, as herein provided, the revenues collectible, as may be damaged or destroyed in part or in whole, from any — be provided, shall accept the wharves, landings, and levees in the condition in which the same may be on the said 29th day of May, 1881, and that the said person or persons so accepting and taking possession of the said wharves, landings, levees, and bulkheads shall repair and always keep the same in good order and condition during the whole term of their contract.

Art. 5 (5). That the repairs of the wharves and bulkheads shall consist in repairing all holes in the flooring of the wharves and bulkheads and inclined planes immediately upon their first appearance; in raising all portions of the wharves which may have sunk or which may sink to a level of the steamboat landing at Conti

street; in taking out and renewing all caps and stringers, piles, mooring piles, fender piles, bulkheads, etc., which may be found rotten or decayed; in building anew all wharves and bulkheads which from general decay may require the same, and to rebuild any and all wharves and bulkheads, where the same now exist or which may be constructed during the term of their lease, that may — cause whatsoever, and in extending into the river all wharves and bulkheads which may require extension, so as to have at all times a depth of water of twenty-five feet at the water line of each and every wharf used by ships and steamships, and a depth of water of twelve
73 feet at the water line of each and every wharf used by steamboats, barges, and flat-boats.

Art. 6 (6). That in making the repairs to and in building new wharves the piles used shall be either of pine or cypress timber of the best quality, not less than eleven by eleven inches square at one end and nine inches square at the other end, which shall be driven not less than twenty feet into the solid ground, at distances of not more than ten feet from centres. The heads of the piles shall be squared according to the levels to be given by the city surveyor and shall receive and support eleven-inch square caps, which shall be strongly fastened to each of the piles with rag bolts one inch square by eighteen inches long; these caps to be of the best quality of pine or cypress timber. The stringers shall be at least ten inches square; shall rest at right angles upon the caps at distances of five feet from centres, and shall be strongly fastened at each alternate intersection with the caps with rag bolts seven-eighths of an inch square by sixteen inches long. These stringers shall be of the best quality of pine or cypress timber. The planks for the flooring shall be of yellow pine of the best quality, free from sap, twelve inches wide by three inches thick and not less than fifteen feet long; they shall be strongly fastened to each of the stringers with six-inch pressed spikes, two at each end of the plank and one at each intersection with the stringer; the joints between the planks of said flooring not to be more than three-fourths ($\frac{3}{4}$) of an inch in width.

Art. 7 (7). That each and every wharf used by steamboats,
74 barges, and flat-boats shall have an incline plane or apron not less than thirty (30) feet in width projecting out of the knuckle row of piles of the wharf on the outside of said incline plane and adjoining the last row of piles thereof. A row of fender piles shall be driven, which shall receive a cap of not less than eleven inches square laid on a level with the cap of the inner row of piles, and on the top of said outer cap shall rest a fender cap twelve inches square, which shall be fastened to the two other caps at distances of five (5) feet with screw bolts of one (1) inch in diameter and of suitable lengths. On the outer edge of said incline plane, at distances of eighty (80) feet apart and independent from the wharf, clusters of piles shall be driven, each cluster to be composed of four piles, which shall be bolted together with eight screw bolts of one and a quarter inch in diameter and of suitable lengths; that the person to whom shall be adjudicated this contract shall repair and keep in good order and condition during the whole term of contract such

inclined planes or aprons as do now exist, and in case there shall be no inclined planes, as above required, at the time of accepting the present contract the person or persons so accepting shall cause said inclined planes to be built at his or their own expense, and shall keep the same in repair as aforesaid during the entire term of his or their contract.

Art. 8 (8). That at each and every wharf used for ships a row of fender piles shall be driven adjoining the outer row of piles,
75 which shall be fastened each with the outer row of piles of the wharf with at least two screw bolts of one and a quarter inch in diameter; that on the front of each of said ship wharves two fender caps shall be placed, one on a level with the flooring of the wharf and the other at five feet above low-water mark; said fenders shall be twelve (12) inches square, and shall be fastened to the piles of the wharf with screwed bolts of one and a quarter inch in diameter. And the person or persons to whom shall be adjudicated the said contract shall repair and keep in good order and condition during the whole term of said contract such fender piles and caps as above required. At the time of accepting said contract the person or persons so accepting shall cause said fender piles and fender caps to be driven and placed as above required at his or their own expense, and shall keep the same in repair as aforesaid during the whole term of contract.

Art. 9 (9). That at each and every wharf used by steamships a row of fender piles shall be driven adjoining the outer row of piles, which shall be fastened each with the outer row of piles of the wharf with at least two screw bolts of one and a quarter inch in diameter, each and every alternate pile to be at least eight feet above the flooring of the wharf; that on the front of each of said steamship wharves two fender caps shall be placed, one on a level with the flooring of the wharf and the other at five feet above low-water mark, said fenders to be twelve inches square and to be fast-
76 ened to the piles of the wharf with screw bolts of one and a quarter inch in diameter; and the person or persons to whom shall be adjudicated said contract shall repair and keep in good order and condition during the whole term of contract such fender piles and fender caps as do now exist, and in case there shall be no fender piles and caps, as above required, at the time of accepting said contract the person or persons so accepting shall cause said fender caps and fender piles to be placed and driven, as above required, at his or their own expense, and shall keep the same in repair as aforesaid during the whole term of said contract.

Art. 10 (10). That — all the wharves mooring piles, at least twelve inches square, shall be driven as follows: On the steamboat, barges, and flat-boat wharves, single piles along the knuckle row of the inclined planes at distances of fifty feet from centres; on the steamship and ship wharves and on the levee along the same, double piles, wherever the city surveyor shall direct; each of the aforesaid mooring piles to be strongly fastened to the piles of the wharves with at least two screw bolts of one inch in diameter, and those on the levee to be strongly anchored, and all to project at least four

feet above the flooring of the wharves and the top of the levee; and the person or persons to whom shall be adjudicated said contract shall repair and keep in good order and condition during the whole term of contract such mooring piles as do now exist and in case there shall be no mooring piles, as above required, at the time of accepting said contract the person or persons accepting shall
77 cause said mooring piles to be driven and placed at his or their own expense, and shall keep the same in repair as aforesaid during the whole term of said contract.

Art. 11 (11). That the person or persons to whom shall be adjudicated said contract shall be bound to build also additional new wharves that may be necessary, provided he be not required to expend on such new wharves more than twenty-five thousand dollars in any one year, the said new wharves being calculated at the rate of twenty dollars per square and no more. The said person or persons shall be bound under said twenty-five-thousand-dollar clause to begin by the first of July, 1881, to connect all of the wharves of the first and fourth districts, commencing at Calliope street and running upstream until the elevator wharf is reached, and then commencing at the ferry wharf, opposite the meat market, and running downstream to Poland street, should the caving bank of this section be so strengthened as to permit the same, and then to build all new wharves which may be ordered by the council in the fifth, sixth, and seventh districts. All ferry and nuisance wharves and all wharves granted to railroad companies are not included in the connection of said wharves. The term " new wharves," as expressed in this section, shall be construed as meaning new wharves where there are no wharves now existing, and shall not apply to the rebuilding of wharves to replace old ones nor to the extension of old wharves into the river so as to obtain the depth of water, as before specified, at the water line of the wharves.

78 Art. 12 (12). That the person or persons to whom shall be adjudicated said contract shall be bound to accept the leyees in the first, second, third, and fourth districts in whatever condition they may be in on the 29th day of May, 1881; to fill up the same during the first year of the contract, so as to place the outer edge of the same at the level now established—to a level of the steamboat landing at Common street; to grade the same from their outer edge to the paving of the street in the rear on a regular declivity; to cover the same with a sufficient thickness of hard substances, such as rock, gravel, or lake and oyster shells; to keep the same always in good order and condition by filling up all the holes on their first appearance with hard substances as above mentioned; to fill up with river sand all parts of the same which may cave in or sink below the grades aforesaid or which may be washed or destroyed by a storm or any other cause whatever, and cover said new filling with hard substances as above mentioned, and whenever the batture shall form so as to require the levee to be extended on the order of the council, to fill up such part or parts of the batture and build such levees as said council may deem necessary.

Art. 13. That the person or persons to whom shall be adjudicated

said contract shall be bound to accept the bulkheads and revetment on the outside of the levees in the first, second, third, and fourth districts in whatever condition they may be in on the 29th day of May, 1881; to keep the same always in good order and condition
79 during the whole term of said contract; to build all new revetments which may be required in place of the old ones, which may be destroyed either by decay, by storms, or any cause whatever, with the best quality of one and a half inch yellow-pine planks, double thickness, driven at least four feet into the solid ground and well braced into the levee, and, in lieu of the obligations therein entailed upon the lessee of the wharves, the said lessee be required to expend the sum of money which would be required to build the piled bulkhead in the third district, between Marigny and Delery streets, which said sum has been estimated at, and is hereby fixed at, ($59,500) fifty-nine thousand five hundred dollars, in protecting the bank of the river between Hospital street, in the second district, and Congress street, in the third district, or at such other places as may be directed by the administrators of improvements and commerce and the city surveyor, so that permanent wharves can be maintained within the said space, and the ultimate connection of all the wharves in the said districts, so as to make one continuous wharf as contemplated by the contract, be rendered feasible and the permanency of such wharf secured, and in giving such additional strength and security and making such improvements to the wharves to be built as the administrator of improvements and administrator of commerce and the city surveyor may decide upon.

Art. 14. That the person or persons to whom shall be adjudicated said contract shall be bound to furnish all the necessary apparatus, and light with the electric light all the levees, landings, and
80 wharves from Toledano street, in the fourth district, to Congress street, in the third district, the lamps or lights to be placed at no greater distance than 250 feet apart, and the height at which the same are to be erected shall be determined on by the city council; said lamps or lights shall be kept lighted each and every night from sunset to sunrise, and the class, quality, make, and power of said light to be designated by the city council.

Art. 15. On the expiration of said lease the lessee or city may buy said electric apparatus at a value to be fixed by appraisers, one to be appointed by the city and one by the lessee, and on failure to agree they, the said appraisers, shall appoint an umpire.

81 *Ordinances and Lease, Marked Exhibits E & F, Referred to in Bill of Exceptions.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *August* 14, 1869.

No. 1528, N. S.

An ordinance to provide for the shelter and protection of sugar and molasses received at the port of New Orleans.

SECTION (1). Be it ordained by the common council of the city of

New Orleans, That Francis B. Fleitas shall have and enjoy for the period of twenty-five years the exclusive right and privilege of using the public spaces on the levee, in the second district of this city, between Custom-House and St. Louis streets, commonly known as the Sugar landing—said spaces being designated on a plan of the city surveyor, to be by him submitted to the committee on streets and landings on or before the 15th day of September, in the year 1869—for the purpose of erecting and constructing thereon fire-proof sheds for the reception and shelter of sugar and molasses, according to the plans and specifications of the city surveyor on the day aforesaid, which sheds, with such arrangements for the transaction of business as may be convenient, are to be constructed on or before the 1st day of November, 1871, unless the construction be interfered with or prevented by extraordinary accident or calamity, from which time said privilege and right is to commence to run: Pro-
82 vided, That said Fleitas, immediately after the passage of this ordinance, shall have the right to enter upon and use the said spaces for the purposes of construction as aforesaid.

SECTION (2). Be it further ordained, That the terms and conditions on which said right and privilege are granted are the following:

1st. Said sheds are to be erected, with such accommodations and convenience for the transaction of business as may be necessary, by said Fleitas, at his own cost and free of expense to the city of New Orleans, and during the existence of said privilege he is to keep said sheds in good order and repair at his own expense.

2d. Said Fleitas is allowed to charge, during the term said privilege is to last, under the provision of this ordinance, a sum not exceeding twenty-five cents on every hogshead of sugar and fifteen cents on every barrel of molasses sheltered under said shed, and no other charge for shelter is to be made, unless the packages aforesaid, after being under cover, shall change hands; then he is allowed to charge each and every time such package changes hands while under cover fifteen cents for each hogshead of sugar and five cents for each barrel of molasses at the time of transfer: Provided, That this last-mentioned charge is to be paid by each transferee or purchaser, and shall not be made when the sugar or molasses transferred or sold shall be removed by such transferee or purchaser on the same day he acquired title: Provided further, That sugar and mo-
83 lasses in other packages than hogsheads and barrels shall be subject to *pro rata* charges.

3rd. The said Fleitas shall pay to the city of New Orleans, as a consideration for said privilege, during the term aforesaid, ten per centum of the gross amount of charges realized for shelter on each hogshead of sugar and each barrel of molasses placed under said sheds, the said per cent. to be paid quarterly, on statements rendered under oath, to the treasurer of the city of New Orleans: Provided, That said sheds and the revenues or income derived therefrom or from said privilege shall not be subject to any municipal taxation whatever during the existence of said privilege.

4th. In addition to the above consideration, the said sheds, at the expiration of said term of twenty-five years, are to be appraised to

their then cash value in the manner following: One appraiser to be appointed by the said Fleitas or his representatives, successors, or assigns, and the other by the city of New Orleans. In case of disagreement the two thus selected shall call in a third disinterested person as umpire, and the appraisement thus made shall be conclusive and binding on all parties, and the city of New Orleans shall have the option to take said sheds at one-half of said appraised value or of extending the privileges herein granted, on the same terms as those herein specified, for the further period of fifteen years, except that at the expiration of said fifteen years said sheds are to revert to the city in full ownership, free of all cost. In case the city of New Orleans, within three months after the expira-
84 tion of said twenty-five years, shall fail or refuse to appoint an appraiser, it shall be considered as having exercised the option to extend the privilege aforesaid for fifteen years longer; and in case the said Fleitas, his representatives, successors, or assigns, shall, within one month after —, the city shall have the right of appointing two additional appraisers, whose appraisement shall be final, and said Fleitas shall receive one-half of the appraised value of said sheds from the city. On the presentation of the decision of the appraisers provided for in this clause and on the payment of the said one-half of the said appraised value the sheds and spaces on which they are erected, as aforesaid, shall be surrendered and transferred to the city of New Orleans.

SECTION (3). Be it further ordained, That the city of New Orleans hereby guarantees to said Fleitas, his representatives, successors, or assigns, during the term of his privilege and its extension, the following:

1st. The undisturbed possession of said public spaces and the sheds thereon erected.

2d. That the present landing for sugar and molasses shall remain where it now is and as designated on the plans aforesaid.

3d. That no other landing for sugar or molasses shall be established or allowed for the city or port of New Orleans.

4th. That no other privilege for the reception and shelter for sugar or molasses shall be allowed by the city.

SECTION (4). Be it further ordained, That in case the sheds erected under the provisions of this ordinance should not be
85 of sufficient capacity to meet the demands of increased production or the requirements of commerce the said Fleitas shall have the right to increase the number of sheds, said additional sheds to be erected on such spaces as the city may designate and on such terms as may be agreed on: Provided, That if said additional sheds are erected within ten years from the 1st November, 1871, the cost thereof is to be paid by the said Fleitas, his representatives, successors, or assigns, and said additional sheds are to revert to the city at the expiration of twenty-five years from the date of construction on the same terms in regard to appraisement and the option to extend the privilege of using the same as if the said additional sheds were originally constructed under this ordinance, and all the terms and stipulations of this ordinance shall be considered applicable to

them in the same manner and to the same extent as they are herein applied to the original sheds.

SECTION (5). Be it further ordained, That said Fleitas shall give security in the sum of fifty thousand dollars for the faithful performance of the stipulations herein contained.

SECTION (6). Be it further ordained, That the wharfinger shall have the right at any time when the levee is encumbered to enforce the now existing regulations.

SECTION (7). Be it further ordained, That the sheds shall not be located nearer than one hundred and fifty feet to the present wooden work or wharves.

86 SECTION (8). Be it further ordained, That if at any time the city should desire to open or extend any street that the privilege hereby granted shall not in any manner prevent said street from being opened or extended.

SECTION (9). Be it further ordained, That all ordinances and parts of ordinances inconsistent or conflicting with the provisions of this ordinance be, and the same are hereby, repealed, and this ordinance shall take effect from and after the date of its promulgation.

(S'g'd) G. PANDELLY,
President Board of Ass't Aldermen.

(S'g'd) LEWIS A. WILTZ,
President Board of Aldermen.

Approved August 14, 1869.

(S'g'd) JNO. R. CONWAY, *Mayor.*
JNO. W. OVERALL,
Secretary, Mayoralty.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *Dec'b'r* 7, 1887.

A true copy of ordinance No. 1528, new series, approved by the mayor August 14, 1869, and duly promulgated in the official journal.

[SEAL.] (Signed) F. L. BOWER,
Chief Clerk.

87 MAYORALTY OF NEW ORLEANS,
CITY HALL, *May* 8, 1878.

No. 4492, admin. series.

An ordinance amending ordinance No. 1528, new series, entitled "An ordinance to provide for the shelter and protection of sugar and molasses received at the port of New Orleans."

Whereas it has been found advisable, by and with the consent of the New Orleans Sugar Shed Company, to change the tariff under which they have been carrying on business by modifying the same as hereinbelow effected and fixing a permanent list of charges to which all persons using said sheds are to conform: Therefore—

SECTION 1. Be it ordained by the mayor and administrators of

New Orleans, in council convened, That the second paragraph of section two of ordinance No. 1528, new series, be amended and re-enacted so as to read as follows: The New Orleans Sugar Shed Company, as transferee and successor of Francis B. Fleitas, shall be allowed to charge during the term the privilege granted by this ordinance shall last (under the provisions thereof) a sum not exceeding forty cents for every hogshead of sugar and fifteen cents for every barrel of molasses sheltered or stored under said sheds for each month or fraction of a month that it shall be sheltered or stored, and one charge not exceeding ten cents for each hogshead and five cents for each barrel for labor in receiving, assorting, storing, and delivering the same, and no other charge shall be
88 made for shelter, storage, or labor unless the packages aforesaid, after being under cover, shall change hands or owners, in which case said charges for shelter or storage as aforesaid shall, as to the transferee or purchaser, be computed from the day of sale or transfer: Provided, That no charge whatever shall be made against the transferee or purchaser when the sugar or molasses transferred or sold shall be removed by such transferee or purchaser on the same day he acquired title: Provided further, That sugar or molasses in other packages than hogsheads or barrels shall be subject to *pro rata* charges for shelter, storage, and labor.

SECTION 2. Be it further ordained, etc., That the bonus of ten per cent. pursuant to paragraph 3rd of said section second shall be paid on the gross receipts for shelter or storage in any manner obtained by said company.

SECTION 3. Be it further ordained, etc., That sugar and molasses landed at the places set apart for the Sugar landing and not left thereon in contravention of city ordinances shall not be placed under the sugar sheds against the consent of the owners; but nothing contained herein shall be construed to affect paragraph two of section nine of said ordinance No. 1528, new series.

SECTION 4. Be it further ordained, etc., That the mayor of the city of New Orleans be, and he is hereby, authorized and directed to receive the assent of the said sugar shed company to the above modification of their charter or contract.

SECTION 5. Be it further ordained, etc., That all city laws and ordinances contrary to and in conflict herewith be, and
89 the same are hereby, repealed, and that this ordinance shall go into effect from and after its passage.

Adopted by the council of the city of New Orleans May 7, 1878.

Yeas—Brown, Cavanac, Denis, Diamond, Edwards, McCaffrey, Rengstorff.

(S'g'd) ED. PILSBURY, *Mayor.*
(S'g'd) THOS. G. RAPIER, *Secretary.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *Dec'b'r* 7, 1887.

A true copy of ordinance No. 4492, administration series, adopted

by the council of the city of New Orleans May 7, 1878, approved by the mayor and duly promulgated in the official journal.

[SEAL] (Signed) E. L. BOWER,
Chief Clerk.

Lease Marked F.

Contract with the city.

STATE OF LOUISIANA, *City of New Orleans:*

Be it known that on this day, the eighteenth of the month
90 of August, in the year of our Lord one thousand eight hundred and sixty-nine, and the ninety-fourth of the Independence of the United States, before me, William Joseph Castell, a notary public in and for the parish of Orleans and official notary for the city of New Orleans, duly commissioned and qualified, and in presence of the witnesses hereinafter named and undersigned, personally appeared the Hon. John R. Conway, mayor of the city of New Orleans, herein acting in his said capacity, and Francis B. Fleitas, of the city of New Orleans, and the said mayor, acting as aforesaid, declared, by virtue of the authority in him vested by an ordinance, No. 1528, N. S., passed by the common council of the city of New Orleans, entitled "An ordinance to provide for the shelter and protection of sugar and molasses received at the port of New Orleans," he does, by these presents, grant, bargain, and confirm unto said Francis B. Fleitas and contract with him as follows:

That said Francis B. Fleitas shall have and enjoy for the period of twenty-five years the exclusive right and privilege of using the public spaces on the levee, in the second district of this city, between Custom-House and St. Louis streets, commonly known as the Sugar landing—said spaces being designated on a plan of the city surveyor, to be by him submitted to the committee on streets and landings on or before the 15th day of September, in the year 1869—for the
91 purpose of erecting and constructing thereon fire-proof sheds for the reception and shelter of sugar and molasses, according to the plans and specifications of the city surveyor on the day aforesaid, which sheds, with such arrangements for the transaction of business as may be convenient, are to be constructed on or before the first day of November, 1871, unless the construction be interfered with or prevented by extraordinary accident or calamity from which time said privilege and right is to commence to run: Provided, That said Fleitas, immediately after the passage of said ordinance, shall have the right to enter upon and use the said spaces for the purpose of construction aforesaid.

That the terms and conditions on which said right and privilege are granted are as following:

1st. Said sheds are to be erected, with such accommodation and conveniences for the transaction of business as may be necessary, by said Fleitas at his own cost and free of expense to the city of New Orleans, and during the existence of said privilege he is to keep said sheds in good order and repair at his own expense.

2d. Said Fleitas is allowed to charge, during the term said privilege is to last under the provisions of said ordinance, a sum not exceeding twenty-five cents on every hogshead of sugar and fifteen cents on every barrel of molasses sheltered under said sheds, and no other charge for shelter is to be made unless the packages aforesaid, after being under cover, shall change hands; then he is allowed to charge each and every time such package changes hands while
92 under cover fifteen cents for each hogshead of sugar and five cents for each barrel of molasses at the time of transfer: Provided, That this last-mentioned charge is to be paid by each transferee or purchaser, and shall not be made where the sugar or molasses transferred or sold shall be removed by such transferee or purchaser on the same day he acquired title: Provided, further, That the sugar and molasses in other packages than hogsheads and barrels shall be subject to *pro rata* charges.

3d. The said Fleitas shall pay to the city of New Orleans, as a consideration for said privilege during the term aforesaid, ten per centum of the gross amount of charges realized for shelter on each hogshead of sugar and each barrel of molasses placed under said sheds, the said per cent. to be paid quarterly on statements rendered under oath to the treasurer of the city of New Orleans: Provided, That said sheds and the revenues or income derived therefrom or from said privilege shall not be subject to any municipal taxation whatever during the existence of said privilege.

4th. In addition to the above consideration, the said sheds, at the expiration of said term of twenty-five years, are to be appraised at their then cash value in the manner following: One appraiser to be appointed by the said Fleitas or his representatives, successors, or assigns, and the other by the city of New Orleans. In case of disagreement between the two thus elected — shall call in a third uninterested person as umpire, and the appraisement thus made shall be conclusive and binding on all parties, and the city of New Orleans shall have the option to take said sheds at one-half of said ap-
93 praised value or of extending the privilege herein granted for the further period of fifteen years on the same terms as those herein specified, except that at the expiration of said fifteen years said sheds are to revert to the city in full ownership, free of all cost. In case the city of New Orleans, within three months after the expiration of said twenty-five years, shall fail or refuse to appoint an appraiser, it shall be considered as having exercised the option to extend the privilege aforesaid for fifteen years longer, and in case the said Fleitas, his representatives, successors, or assigns, shall, within one month after the city shall have appointed its appraiser, fail or refuse to appoint an appraiser on his behalf, the city of New Orleans shall have the right of appointing two additional appraisers, whose appraisement shall be final, and said Fleitas shall receive one-half of the appraised value of said sheds from the city. On the presentation of the decision of the appraisers provided for in this clause and on the payment of the one-half of the said appraised value the sheds and spaces on which they are erected as aforesaid shall be surrendered and transferred to the city of New Orleans.

That the city of New Orleans hereby guarantees to said Fleitas, his representatives, successors, or assigns, during the term of this privilege and its extension, the following:

1st. The undisturbed possession of said public spaces and the sheds thereon erected.

2d. That the present landing for sugar and molasses shall remain where it now is and as designated on the plan aforesaid.

94 3d. That no other landing for sugar or molasses shall be established or allowed for the city or port of New Orleans.

4th. That no other privilege for the reception and shelter of sugar or molasses shall be granted by the city.

That in case the sheds erected under the provisions of said ordinances shall not be of sufficient capacity to meet the demands of increased production or the requirements of commerce the said Fleitas shall have the right to increase the number of sheds, said additional sheds to be erected on such spaces as the city may designate and on such terms as may be agreed on: Provided, That if said additional sheds are erected within ten years from the first of November, 1871, the cost thereof to be paid by said Fleitas, his representatives, successors, or assigns, and said additional sheds are to revert to the city at the expiration of twenty-five years from the date of construction on the same terms in regard to appraisement and the option to extend the privilege of using the same as if the said additional sheds were originally constructed under the said ordinance, and all the terms and stipulations of said ordinance shall be considered applicable to them in the same manner and to the same extent as they are herein applied to the original sheds.

That said Fleitas shall give security in the sum of fifty thousand dollars for the faithful performance of the stipulations herein contained.

That the wharfingers shall have the right, at any time when the levee is encumbered, to enforce the now existing regulations.

95 That the sheds shall not be located nearer than one hundred and fifty feet to the present wooden work or wharves.

That if at any time the city should desire to open or extend any street that the privilege hereby granted shall not in any manner prevent said street from being opened or extended.

The said Fleitas, hereby binding himself, his heirs, executors, or assigns, to execute the above and foregoing contract in according with the said ordinance No. 1528, N. S., and in accordance with the plans and specifications to be hereafter prepared by the city surveyor as aforesaid, binding himself in all respects to comply with all the stipulations contained in said ordinance, a duly certified copy of which ordinance, which was approved on the 14th of August, 1869, is and remains hereto annexed for all future reference and is made part hereof.

And now personally came and appeared Samuel Jamison, James J. Warren, Francis H. Hatch, and Samuel E. Moore, all of the city of New Orleans, who, having read what is above written, declare that they hereby guarantee to the city of New Orleans the faithful performanee of the foregoing contract by the said Francis B. Fleitas,

and bind themselves, their heirs, executors or, assigns, *in solido*, in favor of the said city of New Orleans, in the sum of fifty thousand dollars, in lawful money of the United States of America, payable on demand to the city of New Orleans.

Now, the condition of the above-written bond or obligation is such that if the said Francis B. Fleitas shall well, truly, and faithfully perform and execute the present contract in accordance
96 with the said ordinance, etc., as aforesaid, then the above written bond and obligation to be null and void, but otherwise to be and remain in full force and virtue. The said S. Jamison, J. J. Warren, F. H. Hatch, and Sam'l E. Moore hereby waive the benefit of division and discussion granted by law to sureties.

United States internal revenue stamps amounting to one dollar and fifteen cents are affixed hereto, duly cancelled at the execution thereof.

Thus done and passed in my office, at the city of New Orleans aforesaid, the day, month, and year first above written, in presence of Lawrence McCormick and Michael L. Luther, competent witnesses, domiciliated in this city, who hereunto sign their names with said parties and me, said notary, after the reading of these presents.

(Signed) JOHN R. CONWAY, *Mayor.*
F. B. FLEITAS.
SAM'L E. MOORE.
F. H. HATCH.
J. J. WARREN.
SAM'L JAMISON.
W. J. CASTELL,
Notary Public.

LAWRENCE McCORMACK.
MICHAEL LUTHER.

Correct as to form.

F. A. MONROE,
For City Attorney.

Advertisement of Sale, Marked G. Referred to in Bill of Exceptions.

United States marshal's sale by United States marshal.

97 In the United States Circuit Court for the Eastern District of Louisiana.

LOUISIANA CONSTRUCTION COMPANY, Limited,
vs.
THE CITY OF NEW ORLEANS. } No. 11449.

By virtue of a writ of *fieri facias* to me directed in the above-entitled suit I will proceed to sell to the highest bidder, on Thursday, the thirtieth (30th) day of June, 1887, at 12 o'clock m., at the main entrance to the custom-house on Canal street, in New Orleans, the following-described property, viz:

All the right, title, and interest of the city of New Orleans, defendant herein, in and to the following property, to wit:

1. Square A, bounded by Custom-House and Bienville streets and the lines of the Louisville and the Nashville and Morgan railroads and the sugar landing, said square measuring 121 feet 2 inches on Bienville street and Custom-House street, 340 feet 3 inches on the line of said railroads, and 340 feet 6 inches and 3 lines on the line of said sugar landing.

2. Square B, bounded by Custom-House, Bienville — and the line of the Louisville and Nashville and Morgan's railroads, said square measuring 120 feet front on Custom-House street, 80 feet 6 inches front on Bienville street, 308 feet 8 inches and 3 lines front on Front street, 153 feet front on —, and 171 feet 10 inches and 3 lines front on the line of said railroad.

3 *a*. Square 6, being a triangle of land, bounded by Bienville, Conti, Front streets, and the line of the Louisville and Nashville and Morgan's railroads, measuring 64 feet 1 inch and 4 lines on Bienville street, 274 feet 0 inch and 3 lines on Front street, 271
98 feet 8 inches and 1 line on the line of said railroads, and coming to a front near the intersection on Front and Conti streets.

3 *b*. Square D, bounded by Bienville, Conti, the line of the Louisville and Nashville railroad, and the sugar landing, measuring 92 feet 6 inches and 3 lines on each of said Bienville and Conti streets, by 330 feet 6 inches and 7 lines on the line of said railroads, and 330 feet 0 inch and 2 lines on said sugar landing.

4. Square E, bounded by Conti, St. Louis, Clay, and Front streets, said square being pentagonal in shape and measuring 119 feet 11 inches and 7 lines on Conti street, 74 feet 2 inches and 5 lines on St. Louis street, 309 feet 8 inches and 7 lines on Clay street, and as to the two sides on Front street, 134 feet 0 inches and 5 lines as to one and 194 feet 2 inches and 7 lines as to the other.

5. All the right, title, and interest of the city of New Orleans, of every kind and nature, to the sheds, structures, buildings, and improvements in said squares A, B, C, D, and E, as set forth in city ordinances No. 1528, N. S., approved August 14, 1869, and in the notarial act passed before W. J. Castell, notary public, on Aug 18, 1869, between said city and F. B. Fleitas and others, said right consisting—

1. Of the option to take said sheds and structures at one-half of their appraised cash value at the expiration of twenty-five years from November 1st, 1871, the right and power to appoint ap-
99 praisers, as designated in said ordinances and the contract, for the purpose of determining said appraised cash value.

2. The option of extending the right to use said sheds and squares, as designated in said ordinances and contracts, for fifteen years subsequent to said Nov. 1st, 1896.

3. Of the right of reversion of said sheds to the city in full ownership after the expiration of said fifteen years' additional lease.

6. All the right, title, and interest, of every kind and nature, of the city of New Orleans in and to and arising under the contract

passed before W. J. Castell, notary public, and F. B. Fleitas and others on August 18, 1869, by virtue of city ordinance No. 1528, N. S., which said contract has been transferred to the New Orleans Sugar Shed Company, and the terms of which lease — been modified by ordinance No. 4492, N. S., including the right to receive under said contract 10 per cent. of the gross annual receipts of said Sugar Shed Company until November 1, 1896.

Seized in the above suit.

Terms cash.

United States marshal's office, New Orleans, May 28th.

R. B. PLEASANTS,

United States Marshal for the Eastern District of Louisiana.

Return marked H referred to in bill of exceptions.

100 Under instructions in writing received from plaintiff's attorney the property herein seized and fully described in the foregoing original return on this writ was readvertised for sale at public vendue in conformity with law. The said advertisements for the said sale were published in the English language in the newspaper printed in English and published in the city of New Orleans and known as the New Orleans Picayune, and appeared therein on the 28th day of May and on the 2d, 9th, 16th, 23d, and 30 days of June, 1887, and in the French language in the newspaper printed and published in the French language in the city of New Orleans and known as the New Orleans Bee, and appeared therein on the 28th day of May and on the 2d, 9th, 16th, 23d, and 30th days of June, 1887, the last-named day, to wit, 30th June, 1887, being the day fixed for the said sale and being the full time required by law, announcing the said sale to take place on Thursday, the 30th day of June, 1887, at the hour of 12 o'clock m., at the main entrance to the custom-house on Canal street, in the city of New Orleans; and, after having complied with all the previous legal requisites and the day of the said sale about to take place having arrived, I did, at the hour appointed for the said sale, repair to the place designated at which the said sale was to be made, to wit, the main entrance to the custom-house on Canal street, in the city of New Orleans, and proceed to offer all of the said property so seized, as hereinbefore set forth and described, for sale at public auction, with exception of the

101 square or plot of ground described as Square "C" and known as a public park, of which exception announcement was made audibly by me by virtue of authority contained in written instructions received from plaintiff's attorney previous to the day of said sale and now on file in this office. After reading in a loud and audible voice the advertisement of the said sale and the certificate of the register of conveyances of even date of day of sale as well as the certificate of the recorder of mortgages for the city of New Orleans and parish of Orleans, dated the day of the said sale, at the hour of 9 a. m., showing the mortgages and encumbrances bearing upon and resting against the property about to be sold, I cried the said property for sale at public auction; when, after duly

crying the same, Isidore Newman, being the last and highest bidder in the sum of fifty thousand dollars, the said property was adjudicated to the said Isidore Newman for the said sum and price of fifty thousand dollars. Of the said price of adjudication the purchaser paid me in cash the sum of four thousand dollars by agreement with plaintiff's attorney, whose consent in writing to the purchaser's retaining the balance of purchase price in his hands is now on file in this office. From the general seizure under garnishment process in the hands of the New Orleans Sugar Shed Company, referred to in the original return on this writ and marked "C" for reference, nothing having come into my hands, I, therefore, now, under instructions from E. Howard McCaleb, Esq., attorney for plaintiff, make this return of my doings under this writ.

Returned March 8th, 1888.

(Signed) R. B. PLEASANTS,
U. S. Marshal,
By W. B. LOGAN, *D'y M'l.*

102 Ordinance No. 1528, referred to in bill of exceptions, copied at page 81 of this transcript.

Ordinance No. 4492, referred to in bill of exceptions, copied at page 87 of this transcript.

Ordinance No. 1386, *Referred to in Bill of Exceptions.*

Official.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *August* 22, 1885,
No. 1386—Council Series.

An ordinance extending the time of lease of the wharves, landings, levees, and bulkheads of the city of New Orleans, leased under ordinance No. 7079, A. S., as amended by ordinance No. 7335, A. S.

SECTION 1. Be it ordained by the council of the city of New Orleans, That the lease of the wharves, landings, levees, and bulkheads to Messrs. Jos. A. Aiken & Co., by ordinance No. 7079, A. S., as amended by ordinance 7335, A. S., be, and the same is hereby, extended for and during a period of five years from the 29th day
103 of May, 1886, to and including the 28th day of May, 1891, for and in consideration of the right hereby given to said Joseph A. Aiken & Co. to collect during the existence of this extended lease, wharfage dues at the rates heretofore provided for the last year of the lease, of which this is an extension and under the following terms, conditions, stipulations, and requirements, to wit:

SEC. 2. Be it further ordained, etc., That the extension of said lease of the wharves, landings, levees, and bulkheads to the said Joseph A. Aiken & Co., present lessees, shall comprise the wharves, landing, levees, and bulkheads already constructed and existing in the first, second, third, and fourth districts of the city of New Orleans,

from Toledano street to the lower limit of the city, which is the upper line of the United States barracks, excepting therefrom all ferry and nuisance wharves and all wharves granted to the New Orleans Pacific Railway Company, as well as the wharf granted to the New Orleans Elevator Company, until such time as their present franchises expire, and excepting generally all such wharves or portions of wharves and of the river bank, the exclusive use of which may be enjoyed by private individuals or corporations under existing grants or leases until such time as said grants or leases may expire, after which the said lessees shall take charge of same under this ordinance, under similar conditions as other wharves. All United States Government vessels shall be exempt from payment of wharfage dues.

SECTION 3. Be it further ordained, etc., That the levees already
104 existing in the first, second, third, and fourth districts of the city of New Orleans, extending from the river to the line of the street fronting the river—that is to say, in the fourth district, from Toledano to Adele streets, Water street, and from Adele street to Felicity street, Peters street; in the first district, from Felicity street to Orange street, the paved roadway in front of the wharves; from Henderson street to Terpsichore street, the paved roadway in front of the wharves; from Calliope to Julia street, New street; from Julia street to Girod street, Pelie street; from Girod street to Poydras street, within five feet of railroad tracks; from Poydras street to Canal street, to five feet of railroad tracks; from Canal street to Custom-House street, the street in front of the railroad depot; from Custom-House to St. Louis street, the street in front of the sugar sheds; from St. Louis street to St. Ann street, Clay street; from St. Ann street to Dumaine street, the street in front of the meat market, and from Dumaine street to Barracks street, the Mobile and Texas railroad tracks; and in the third district, from Marigny street to Mandeville street, the street in front of the Marigny store, and from Mandeville to the lower limits of the city, Peters street.

SEC. 4. Be it further ordained, etc., that the said Jos. A. Aiken & Co., present lessees, shall, under this extension of lease or contract, accept the wharves, landings, levees, and bulkheads in the condition in which the same may be on the 29th day of May, 1886, and that
105 the said Jos. A. Aiken & Co., so accepting and taking possession of said wharves, landings, levees, and bulkheads, shall repair and always keep the same in good order and condition during the whole term of their contract or lease as herein extended.

SEC. 5. Be it further ordained, etc., That the repairs of the wharves, levees, landings, and bulkheads shall consist in repairing all holes in the flooring of the wharves, bulkheads, and inclined planes immediately upon the first appearance; in raising all portions of the wharves which may have sunk or which may sink to a level of the steamboat landing at Common street; in taking out and renewing all caps and stringers, piles, removing piles, fender piles, bulkheads, etc., which may be found rotten or decayed; in building anew all wharves and bulkheads which from general decay may require the same, and to rebuild any and all wharves and bulkheads, where the

same now exist or which may be constructed during the term of this extended lease or contract, that may be damaged or destroyed in part or in whole from any cause whatsoever, and to have a depth of water of twenty-five (25) feet at the water line of each and every wharf used by ships and steamships, when required for the purpose of commerce, and a depth of water of twelve feet at the water line of each and every wharf used by steamboats, barges, and flat-boats.

SEC. 6. Be it further ordained, etc., That in making the repairs to and in building new wharves the piles used shall be either pine or cypress timber of the best quality, not less than 11 inches square at one end and nine square at the other end, which shall be driven not less than twenty feet into the solid ground at distances of
106 not more than ten feet from centres. The heads of the piles shall be squared according to the levels to be given by the city surveyor, and shall receive and support eleven (11) inch square caps, which shall be strongly fastened to each of the piles with rag bolts one inch square by eighteen inches long; these caps to be of the best quality of pine or cypress timber. The stringers shall be at least ten inches square, shall rest at right angles upon the caps at distances of five feet from centres, and shall be strongly fastened at each alternate intersection with the caps with rag bolts seven-eighths of an inch square by 16 inches long. These stringers shall be of the best quality of pine or cypress timber. The planks for the flooring shall be of yellow pine of the best quality, free from sap, 12 inches wide by three inches thick and not less than 15 feet long. They shall be strongly fastened to each of the stringers with six-inch pressed spikes, two at each end of the plank and one at each intersection of the stringer; the joints between the planks of said flooring not to be more than three-fourths ($\frac{3}{4}$) of an inch in —.

SEC. 7. Be it further ordained, etc., That each and every wharf used by steamboats, barges, and flat-boats shall have an incline plane or apron not less than thirty (30) feet in width projecting out of the knuckle row of piles of the wharf on the outside of said incline plane and adjoining the last row of piles thereof. A row of fender piles shall be driven, which shall receive a cap of not less than eleven inches square, laid on a level with the cap of the inner row of piles, and on the top of said outer cap shall rest a fender cap twelve
107 inches square, which shall be fastened to the two other caps at distances of five (5) feet with screw bolts of one (1) inch in diameter and of suitable lengths. On the outer edge of said incline plane, at distances of eighty (80) feet apart and independent from the wharf, clusters of piles shall be driven, each cluster to be composed of four piles, which shall be bolted together with eight screw bolts of one and a quarter inch in diameter and of suitable lengths; that the said Jos. A. Aiken & Co., present lessees under this extension of lease or contract, bind themselves to repair and keep in good order and condition during the whole term of said extension such inclined planes or aprons as do now exist, and in case there shall be no inclined planes or aprons, as above required, at the time of accepting this extended lease or contract the said Jos. A. Aiken & Co., so accepting, shall cause such inclined planes or aprons to be

built at their own expense, and shall keep the same in repair as aforesaid during the entire term of such extension of lease or contract.

SEC. 8. Be it further ordained, etc., That at each and every wharf used for ships a row of fender piles shall be driven adjoining the outer row of piles, which shall be fastened with the other row of piles of the wharf with at least two screw bolts of one and a quarter inch in diameter; that on the front of each of said ship wharves two fender caps shall be placed, one on a level with the flooring with the wharf and the other at five feet above low-water mark. Said fenders shall be twelve (12) inches square and shall be fast-
108 ened to the piles of the wharf with screw bolts of one and a quarter inch in diameter; and the said Jos. A. Aiken & Co., under this extension, shall repair and keep in good order and condition, during the whole term of such extension, such fender piles and caps as above required, and shall cause such fender piles and fender caps to be driven and placed as above required at their own expense, and shall keep the same in repair during the whole term of this extension of lease or contract.

SEC. 9. Be it further ordained, etc., That at each and every wharf used by steamships a row of fender piles shall be driven adjoining the outer row of piles, which shall be fastened each with the outer row of piles of the wharf with at least two screw bolts of one and a quarter inch in diameter, each and every alternate pile to be at least eight feet above the flooring of the wharf; that — the front of each said steamship wharves two fender caps shall be placed, one on a level with the flooring of the wharf and the other at five feet above low-water mark, said fenders to be twelve inches square and to be fastened to the piles of the wharf with screw bolts of one and a quarter inch in diameter; and the said Jos. A. Aiken & Co. shall repair and keep in good order and condition, during the whole term of contract, such fender piles and fender caps as do now exist, and in case there are no fender piles and caps, as above required, at the time of accepting this extension of lease or contract the said Jos. A. Aiken & Co. shall cause such fender caps and fender piles to be driven as above required at their own expense, and shall
109 keep the same in repair as above said during the whole time of such extension of lease or contract.

SEC. 10. Be it further ordained, etc., That — all the wharves mooring piles at least twelve inches square shall be driven as follows: On steamboat, barges, and flat-boat wharves, single piles along the knuckle row of the inclined planes, at distances of fifty feet from centres; on the steamship and ship wharves and on the line along the same, double piles wherever the city surveyor shall direct; each of the aforesaid mooring piles to be strongly fastened to the piles of the wharves with at least two screw bolts of one inch in diameter, and those on the levee to be strongly anchored, and all to project at least four feet above the flooring of the wharves and the top of levees; and the said Jos. A. Aiken & Co. shall repair and keep in good order and condition, during the whole of this extension of lease or contract, such mooring piles as do now exist, and in case there shall be no

mooring piles, as above required, at the time of accepting this extension of lease or contract the said Jos. A. Aiken & Co. shall cause said mooring piles to be driven and placed at *his* own expense, and shall keep the same in repair as aforesaid during the whole term of this extension of lease or contract.

SEC. 11. Be it further ordained, etc., That the said Jos. A. Aiken & Co., present lessees, bind themselves by this extension of lease or contract to build all additional new wharves that may be necessary, provided they be not required to expend on such new wharves
110 more than twenty-five thousand ($25,000) dollars in any one year, the said new wharves being calculated at the rate of twenty ($20) dollars per square, and no more. All ferry and nuisance wharves and all wharves granted to railroad companies are not included in the connection of said wharves. The term "new wharves," as expressed in this section, shall be construed as meaning new wharves where there are no wharves now existing, and shall also apply to the rebuilding of entirely new wharves to replace old ones and raising wharves and levees to the requisite grade and level of new wharf at the head of Canal street, when so ordered by the council or proper officer of the city, on the approval of the city council.

SEC. 12. Be it further ordained, etc., That the said Jos. A. Aiken & Co. hereby bind themselves by this extension of lease or contract to accept levees in the first, second, third, and fourth districts in whatever condition they may be in on the 29th day of May, 1886, and further bind themselves to grade the same from their outer edge on a regular declivity as they are described in section 3 hereof, and shall cover the same with a sufficient thickness of hard substances, such as rock, gravel, or lake and oyster shell, and shall keep the same always in good order and condition by filling up all holes on their first appearance with hard substances, as above mentioned, and to fill up with river sand all parts of the same which may cave in or sink below the grades aforesaid or which may be washed or destroyed by a storm or any other cause whatever, and cover said new filling with hard substances, as above mentioned, and when-
111 ever the batture shall form so as to require the levee to be extended, on the order of the council, to fill up such part or parts of the batture and build such levees as said council may deem necessary.

SEC. 14. Be it further ordained, etc., That the said Jos. A. Aiken & Co. bind themselves by the extension of this lease or contract to accept the bulkheads and revetment on the outside of the levees of the first, second, third, and fourth districts in whatever condition they may be in on the 29th day of May, 1886, and to keep the same always in good order and condition during the whole term of the extension, and to build all new revetments which may be required in place of the old ones, which may be destroyed either by decay, by storms, or any cause whatever, with the best quality of one-and-a-half-inch yellow-pine plank, double thickness, driven at least four feet into the solid ground and well braced into the levee, the whole in the usual and best workmanlike manner.

SECTION 14. Be it further ordained, etc., That the said Jos. A. Aiken

& Co. further bind themselves to light with electricity all the levees, landings, and wharves from Toledano street, in the fourth district, to Poland street, in the third district, the lamps or lights to be placed at no greater distance than 250 feet apart, and the height at which the same are to be erected shall be determined on by the city council. Said lamps or lights shall be kept lighted each and every night from sunset to sunrise, and the class, quality, and power of said light to be two thousand (2,000) candle-power each of
112 the most improved electric light, and the said Jos. A. Aiken & Co. shall be responsible to the city for all defective lights, and bind and obligate themselves to pay to the treasurer of the city when properly notified of such deficiency; said penalty — be as now imposed on the present electric light companies for non-compliance of contract.

SEC. 15. Be it further ordained, etc., That all the extent of the port from Harmony to Seventh streets be, and the same is hereby, appropriated and set apart as a flat-boat landing, and from Seventh street to St. James street be, and the same is hereby, appropriated and set apart as a landing for steamships and sailing vessels; that all the extent of the port from St. James to Market streets be, and the same is hereby, appropriated and set apart as a landing for staves; that all the extent of the port from Market street to the gas-light company's wharf at Race street be, and is hereby, appropriated as a landing for steamships and sailing vessels; that all the extent of the port from the gas-light company's wharf to Robin street be, and the same is hereby, appropriated and set apart as a landing for coal-boats; that all the extent of the port from Robin street to the upper line of the New Orleans Pacific railway wharf be, and the same is hereby, set apart and appropriated as a landing for steamships and sailing vessels; that all the extent of the port from the lower line of the said railway wharf to a point one hundred and thirty feet below Calliope street be, and the same is hereby, set apart and appropriated as a landing for steamship and sailing vessels; that all the extent of the port from St. Joseph to
113 Girod streets be, and the same is hereby, appropriated and set apart as a landing for barges; that all the extent of the port from Girod to St. Louis streets be, and the same is hereby, appropriated and set apart as a landing for steamboats; that all the extent of the port from St. Louis street to Morgan's ferry landing at St. Ann street be, and the same is hereby, appropriated and set apart as a landing for steamships; that all the extent of the port from the Morgan's ferry landing at St. Ann street to St. Phillip street be, and the same is hereby, appropriated and set apart as a landing for sailing vessels; that all the extent of the port from St. Phillip to Ursulines streets be, and the same is hereby, set apart and appropriated as a landing place for luggers and other small crafts; that all of the extent of the port from Ursulines to Barracks streets be, and the same is hereby, appropriated and set apart as a landing for steamships and sailing vessels; that all the extent of the port from Marigny to Congress streets be, and the same is hereby, appropriated and set apart as a landing for steamships and sailing vessels; and

that all the extent of the port from Congress street to the United States barracks be, and the same is hereby, appropriated and set apart as a landing for vessels of all description.

SEC. 16. Be it further ordained, etc., That all vessels seeking this port in distress and using the city wharves shall pay only half rates.

SEC. 17. Be it further ordained, etc., That all work and repairs to be done under this ordinance shall be done under the supervision
114 of the commissioner of public works and city surveyor; and in case of refusal or neglect on the part of the said Joseph A. Aiken & Co. to perform the necessary work or repairs it shall be the duty of the commissioner of public works to have the same done at the expense of the said Joseph A. Aiken & Co.

SEC. 18. Be it further ordained, etc., That all work required to be done under this ordinance shall be commenced by the said Jos. A. Aiken & Co. after five days' notice thereof has been given by the commissioner of public works and city surveyor, and prosecuted as rapidly as possible.

SEC. 19. Be it further ordained, etc., That in case of failure on the part of the said Jos. A. Aiken & Co. to commence or finish the work or repairs within the time mentioned in the order or orders of the commissioner of public works and the city surveyor, the city council shall have the right, without putting in default, to order the said work and repairs to be done under the supervision of the commissioner of public works and city surveyor at the expense of the said Jos. A. Aiken & Co.; and, further, to hold him or them and his or their sureties liable for all damages caused by said default.

SEC. 20. Be it further ordained, etc., That the city reserve the right to grant to railroad companies the privilege of constructing such improvements and betterments and making such — to wharves that may be hereafter assigned to them, respectively, as in the judgment of the commissioner of public works and city surveyor may be necessary to render such wharves suitable and proper for the transaction of the business of said railroad companies: Pro-
115 vided, That such improvements and repairs shall not cost the said Jos. A. Aiken & Co. a greater amount than if said wharves were constructed according to the specifications heretofore provided for; and all such work shall be classed as new work.

SEC. 21. Be it further ordained, etc., That the aforesaid wharves, landings, and levees shall continue subject to the police regulations now governing the same under existing ordinances, and no change shall be made without the consent of both parties.

SEC. 22. Be it further ordained, etc., That the said Jos. A. Aiken & Co. and their sureties shall be responsible for all damages which may be claimed by the city or by any party or parties who may sustain injury or damage in consequence of the neglect of the aforesaid Jos. A. Aiken & Co. to comply with the requirements of this ordinance.

SEC. 23. Be it further ordained, etc., That it is well understood that in case of failure on the part of the said Jos. A. Aiken & Co. to commence or finish the work or any part thereof within the time fixed the city council shall have the right to annul said contract or

lease without putting the said contractors or lessees in default, as required by article 1905 of the Civil Code or any other law, and without applying to a court of justice to annul the same and without indemnity; and it is also well understood that in case the said lessees or contractors shall at any time abandon the work or not finish or complete the same in conformity with their contract the said contractors or lessees shall forfeit all claims they may
116 have for any part of the work done by them up to the date of their abandonment, and that the city shall be thereby released and discharged from any and all liabilities therefor; and it is also well understood that in case the contract be sold the lessee or contractor and their sureties shall be held and bound to pay unto the city all loss or difference between the price at which the lessees or contractors originally contracted to perform the work and the price at which it may be adjudicated at a resale or readjudication.

SEC. 24. Be it further ordained, etc., That it is also well understood that it is not in the power of the city council or any officer or department of the government of the city of New Orleans to release the said Jos. A. Aiken & Co. from a strict compliance with this contract in all its conditions and in all respects.

SEC. 25. Be it further ordained, etc., That the said Joseph A. Aiken & Co. bind themselves by this extension of lease to pay annually to the city of New Orleans, in equal monthly instalments, the sum of forty thousand ($40,000) dollars, thirty thousand ($30,000) dollars of which shall be devoted to the payment and maintenance of a harbor police for the protection of commerce, etc., along the river front of the city, and the remaining ten thousand ($10,000) dollars to be set apart and devoted exclusively to the payment of the salaries of wharfingers, contravention clerks, signal officers, and other employees on the levees in connection with the depart-
117 ment of public works of this city, and, in connection *to* the foregoing, to keep the wharves lighted by electricity as hereinbefore provided.

SEC. 26. Be it further ordained, etc., That the said Joseph A. Aiken & Co. bind themselves by this extension of lease or contract to reimburse such private individuals or corporations who may have constructed wharves at their expense, and have not heretofore been reimbursed therefor, the present cash value of such wharf or wharves, said value to be assessed by the commissioner of public works and city surveyor, or shall pay annually to such individual or corporation a sum equal to interest upon such cash value at the rate of eight (8) per cent. per annum, at the option of the lessees.

SEC. 27. Be it further ordained, etc., — the said Jos. A. Aiken & Co., for and in consideration of this extension of lease or contract, shall furnish their obligation or bond, with good and solvent security, to be approved by the city council, in the sum of one hundred thousand ($100,000) dollars, conditioned for the true and faithful performance on their part of all the duties and obligations imposed on them by this ordinance.

SEC. 28. Be it further ordained, etc., That the said Jos. A. Aiken & Co., by the acceptance of this extension, obligate themselves not

to sell, subrogate, transfer, assign, set over, or sublet their rights, title, or interest in the same to any person whatever without the consent of the city council being previously obtained, and any such sale, transfer, assignment, subrogation, or lease without the
118 consent of the city council shall subject the said lease to penalties prescribed by this ordinance for violation of its provision, and will authorize the city council, if deemed advisable, to declare the contract forfeited and hold the said lessees and their sureties liable to damages for violation of their contract or lease.

SEC. 29. Be it further ordained, etc., That it shall be the duty of the said lessees to submit to the commissioner of public works on the first day of July of each year a sworn statement, substantiated by books and vouchers, setting forth a full account of their receipts and disbursements during the fiscal year ending May 28th next preceding, and such statement shall show separately the receipts from each class of vessels and also from the wharves herein leased, and also show separately the cost of maintaining and repairing the wharves, levees, landings, and bulkheads by districts.

SEC. 30. Be it further ordained, etc., That all existing leases or contracts for the use of specially designated parts of wharves to steamship lines or other transportation companies be, and are hereby, extended during this continuance of lease, unless otherwise ordained by the city council.

SEC. 31. Be it further ordained, etc., That the said Jos. A. Aiken & Co. shall and will, on the last day of the term of this extension of lease, peaceably and quietly leave, surrender, and yield up their entire plant used in the construction of and maintaining the wharves and landings of this city, with all appurtenances thereunto
119 belonging, in good order and condition, and the said city does for itself agree and bind itself ten days prior to the expiration of this lease to appoint and name an appraiser, who, together with an appraiser to be named by said lessees, will immediately proceed to value the said plant, the two appraisers choosing a third in case of disagreement; and the said city does hereby agree and bind itself upon the surrender of said plant to pay for the same the price so fixed or cause the said price to be paid by the new lessees as one of the obligations of their lease.

SEC. 32. Be it further ordained, etc., That the said Joseph A. Aiken & Co. shall, on or before the 1st of June, 1886, begin the construction of the wharves in the third district of this city, from Marigny to Piety street, including available connections, and to that end shall apply one-half of the amount to be expended by them during each of the two first years of their lease, and that any failure on the part of said lessees to comply with the provisions of this section shall be considered as a renunciation of all the rights acquired under this ordinance.

SEC. 33. Be it further ordained, etc., That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby, repealed.

Adopted by the council of the city of New Orleans August 18, 1885.

M. McNAMARA,
Clerk of Council.

Approved August 21, 1885.

J. V. GUILLOTTE, *Mayor.*

120 A true copy.

TH. BUISSON,
Secretary to the Mayor.

CLERK'S OFFICE, CITY COUNCIL,
NEW ORLEANS, *May* 12, 1887.

I hereby certify the within and foregoing to be a true and correct copy of ordinance No. 1386, C. S.. adopted by the council of the city of New Orleans August 18, 1885.

W. H. MICHEL,
Ass't Clerk of the Council.

Ordinance Marked 2053, *Referred to in the Bill of Exceptions.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *Jan.* 4, 1887.

No. 2053, council series.

An ordinance adopting a budget of revenues of the city of New Orleans for the year 1887.

Valuation of real estate, personal property, and assessments or stock of corporations, etc., etc....	$127,000,000 00

121 Item 1.

Tax of 10 mills on $127,000,000.00 interest and reduction on bonds, as per act No. 58 of 1882..	$1,270,000 00

Item 2.

Tax 10 mills on $127,000,000.00	$1,270,000 00
Licenses as per revenue act 1886	250,000 00
Markets	185,300 00
Fines, fees, and rebates	30,000 00
Ground rents	5,000 00
City cemeteries	1,500 00
Criminal sheriff and clerks of courts	3,500 00
Ferry privileges	12,472 00
Public pounds	1,000 00
Interest and law charges	36,000 00
Vehicle numbers	2,000 00

Carrollton markets	333 33
Sixth and seventh districts levee dues	2,360 00
Total	$1,799,465 33
Less 20 per cent.	359,898 06
	$1,439,572 27
Wharves and landings	40,757 55
Total	$1,480,329 82

Adopted by the council of the city of New Orleans, December 28th, 1886.

W. H. MICHEL,
Ass't Clerk of Council.

122 A true copy.

TH. BUISSON,
Secretary to the Mayor.

Approved January 4, 1887.

J. V. GUILLOTTE, *Mayor.*

I hereby certify the attached slip to be a true and correct copy of ordinance No. 2053, C. S., adopted December 28, '86.

(Signed) W. H. MICHEL,
Ass't Clerk of the Council.

Ordinance No. 1523, *Referred to in Bill of Exceptions.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *May* 15, 1872.

No. 1523, administration series.

An ordinance for the payment of the pay-rolls therein named.

Be it ordained, That the following appropriations be, and are hereby, made in accordance with the terms of ordinance No. 1044, administration series:

Pay-roll, bureau of streets, for week ending May 13, 1872:		
Costs	$2,261 00	
Labor	6,146 40	
		$8,407 40
Pay-roll, bureau of drainage, for week ending May 13, 1872:		
Labor	$3,348 74	
Costs	561 25	
		3,909 99
Am't carried forward		$12,317 39

123	Am't brought forward		$12,317 39
	Pay-roll, bureau of wharves and landings, for week ending May 13, 1872:		
	Labor	$562 33	
	Costs	40 50	
			602 83
	Pay-roll, surveyor's office, for the week ending May 13, 1872		378 16
	Pay-roll, water-works, for the week ending May 13, 1872:		
	Street service	$251 00	
	Extension and improvement	258 75	
			509 75
	Pay-roll, dept. of police, for week ending May 13, 1872:		
	Public squares	$229 50	
	Cemeteries	70 00	
			299 50
	Pay-roll, dept. of commerce, for week ending May 13, 1872		63 58
	Total		$14,171 21

Adopted by the council of the city of New Orleans.
Yeas—Cochran, Shaw, Delassize, Renick, Lewis, Walton, Bonzano.
(S'g'd) BENJ. F. FLANDERS, *Mayor.*
(S'g'd) H. CONQUEST CLARKE, *Secretary.*

CITY HALL, *March* 23, 1888.

124 A true copy of ordinance No. 1523, administration series, adopted by the council, approved by the mayor, and duly promulgated in the official journal May 15, 1872.
[SEAL.] (Signed) E. L. BOWER,
Chief Clerk, Mayor's Office.

Ordinance No. 6996, *Referred to in Bill of Exceptions.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *April 19th*, 1881.

(No. 6996, administration series.)

Resolved, That a committee of three be appointed by his honor to confer with the "Sugar Shed Company," in order to ascertain if said company can be induced to pave certain streets, etc., around their shed and the approaches thereto.

Adopted by the council of the city of New Orleans April 19th, 1881.

Yeas—Delamore, Fazan, Fitzpatrick, Guillotte, Huger, Mealey, Walshe.

(S'g'd) JAS. A. SHAKSPEARE, *Mayor.*

A true copy.

(S'g'd) M. McNAMARA, *Secretary.*

CLERK'S OFFICE, CITY COUNCIL,
NEW ORLEANS, *May* 12, '87.

I hereby certify the within and foregoing to be a true and
125 correct copy of ordinance No. 6996, A. S., adopted April 19, '81.

W. H. MICHEL,
Ass't Clerk of the Council.

Ordinance No. 7444, *Referred to in Bill of Exceptions.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *Nov'b'r* 18, 1881.

No. 7444, administration series.

Resolved, That the sum of $17,319.30 be, and the same is hereby, appropriated to pay the roll of the Crescent City police for the month of October, 1881, and that the administrator of police accounts warrant for the payment of the same whenever there is money to the credit of the appropriate fund and not otherwise appropriated.

Adopted by the council of the city of New Orleans, November 12, 1881.

Yeas—Delamore, Fagan, Fitzpatrick, Guillotte, Huger, Walshe.

JOS. A. SHAKSPEARE, *Mayor.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *March* 23, 1888.

A true copy of resolution No. 7444, administration —, adopted by the council of the city of New Orleans, approved by the mayor,
126 and duly promulgated in the official journal.

[SEAL.] (Signed) E. L. BOWER,
Chief Clerk.

Ordinance No. 7615, *Referred to in Bill of Exceptions.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *February* 15, 1882.

(No. 7615, administration series.)

Be it ordained, That the administrator of commerce is hereby directed to advertise and sell the right or privilege of hauling, rolling,

or placing into the sugar sheds any and all sugars and molasses arriving at the sugar landing of this city and placed in contravention according to existing laws and ordinances from date of contract to 31st December, 1882.

Be it further ordained, That said privilege or right shall be sold to any responsible party or parties guaranteeing to charge the lowest rates for hauling, rolling, or placing said sugar and molasses into said sheds, and that the said rates of charges shall not exceed the following amounts, to wit: Twenty cents per hogshead and five cents per barrel on sugar and six cents per barrel on molasses for hauling and seven cents per hogshead, one and three-quarter cents per barrel on sugar and two cents per barrel on molasses when rolled into said sheds.

127 Be it further ordained, That in the event of any failure on the part of said contractor to comply with the conditions of his contract, then, in that case, the administrator of commerce or his employees under his directions shall forthwith proceed to execute and perform any and all such conditions as stipulated in said contract at the risk and expense of said contractor and his securities.

Be it further ordained, That for the faithful performance of said work the said contractor shall furnish to the city of New Orleans a bond in the sum of $3,000, with solvent security to the satisfaction of the mayor and administrator of finance.

Be it further ordained, That no person or persons holding office under the city government or in any manner connected with the wharfinger's office shall be allowed to bid for said privilege or right of hauling or rolling said molasses and sugars into the sugar sheds.

Be it further ordained, That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

Adopted by the council of the city of New Orleans February 14, 1882.

Yeas—Delamore, Fagan, Fitzpatrick, Guillotte, Huger, Mealey.

Absent—Walshe.

JOS. A. SHAKSPEARE, *Mayor.*

A true copy.

H. McNAMARA, *Secretary.*

NEW ORLEANS, *May* 12, 1887.

I hereby certify the attached slip to be a true and correct
128 copy of ordinance No. 7615, A. S., adopted February 14, '82.

(Signed) W. H. MICHEL,
Ass't Clerk of the Council.

Charter Referred to in the Bill of Exceptions.

Charter.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Be it known that on this twenty-eighth day of January, in the

year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States of America the ninety-fourth, before me, Charles Stringer, a notary public in and for the city of New Orleans, State aforesaid, duly commissioned and sworn, personally came and appeared the persons hereinafter named and undersigned, who severally declared that, availing themselves of the provisions of the statutes of the State of Louisiana relative to the organization of corporations in this State, they have agreed and bind themselves and those whom they represent to form themselves into a corporation for the objects and under the stipulations, regulations, and obligations following, to wit:

129 Article first.

The corporate name of this association shall be the New Orleans Sugar Shed Company.

Article second.

The place of business and legal domicile of this corporation shall be located in the city of New Orleans.

Article third.

The object of this association is to construct and maintain sugar sheds in the city of New Orleans for the protection and shelter of sugar and molasses and for exercising such other powers and privileges as may be necessary for the business appertaining thereto or which are or may be conferred on it.

Article fourth.

The capital stock of this association is hereby fixed at one million two hundred thousand dollars, represented by twelve thousand shares at one hundred dollars each. Six thousand shares of said stock is the property of Francis B. Fleitas and his associates and shall be deemed as paid up to the extent of twenty dollars per share at this time, and shall be exempt from all calls until the other stock shall have been taken and shall have paid twenty dollars per share. Five per cent. of each subscription to the other stock shall be payable at the time of subscription and the remainder shall be paid at the time and in the manner directed by the board of directors: Provided, That not more than ten dollars per share of said subscription shall be called for at any one time and not oftener than once
130 within any thirty days: And provided further, That no subscriber or stockholder shall ever be called on for more than forty dollars per share and his stock then be considered as fully paid.

Should any subscriber or stockholder refuse or neglect to pay punctually any installment or installments as the same mature and fall due interest thereon at the rate of eight per cent. per annum shall be added thereto from maturity till payment; and if any subscriber or stockholder neglects or refuses to pay his installment or install-

ments within thirty days after the specified time of payment the board of directors shall have the right of causing any share or shares on which any installment may be due to be sold at public auction or otherwise, after ten days' previous notice thereof by advertisement in any newspaper published in the city of New Orleans, or of recovering by suit at law the amount due.

Article fourth.

Amended at a general meeting of the stockholders, held on the 26th May, 1874, to read as follows, viz:

"The capital stock of this association is hereby reduced from $1,200,000 to $180,000, one hundred and eighty thousand dollars, represented by three thousand shares of sixty dollars each, full paid."

Article fifth.

That the said corporation hereby assumes all the obligations of Francis B. Fleitas, as principal; John J. Warren, Samuel Jamison, Francis H. Hatch, and Samuel E. Moore, as securities, under
131 the provisions and terms of an ordinance of the common council of the city of New Orleans, approved August 14th, 1869, granting to said Francis B. Fleitas, his representatives, successors, or assigns, the right to have and enjoy, for the period of twenty-five years, the exclusive right and privilege of using the public spaces on the levee, in the second district of the said city, between Custom-House and St. Louis streets, commonly known as the Sugar landing, for the purpose of constructing thereon the fire-proof sheds for the reception of sugar and molasses within the time and according to the plans and specifications of the city surveyor, which ordinance is hereby referred to and a copy made part hereof.

And this corporation hereby assumes all the obligations of the contract contained in the act passed before W. J. Castell, notary public, on the eighteenth day of August, 1869, in compliance with the terms, provisions, and requirements of said ordinance between said Francis B. Fleitas, as principal, and said J. J. Warren, Samuel Jamison, Francis Hatch, and Samuel E. Moore, as securities, and the said city of New Orleans, a duly certified copy of which is herein referred to and made part hereof; and this corporation also assumes and shall refund and pay to said Fleitas his expenditures for plans, surveys, and other outlays, to the sum of seven thousand dollars.

And this corporation hereby obligates itself to do and perform every obligation, thing, and requirement in said ordinance and act of agreement contained, and to hold the said Fleitas,
132 Jamison, Hatch, and Moore harmless from all liability arising out of the non-performance thereof.

And the said Francis B. Fleitas, for the consideration heretofore and hereafter to be expressed and contained herein, has agreed to and does hereby transfer, assign, convey, and abandon unto this corporation all the rights and privileges granted or ordained to him by the aforesaid ordinance of the common council of New Orleans No. 1528, N. S., approved August 11th, 1869, and in the contract

aforesaid of 18th August, 1869, with all the franchises thereunto belonging or appertaining; to have, hold, and enjoy the same as fully, truly, and entirely as he, the said Fleitas, could or might have done had he retained the ownership and control thereof.

Six thousand shares of the stock of said company shall be the property of said Francis B. Fleitas, Francis H. Hatch, J. J. Warren, Thomas J. Semmes, Samuel Jamison, Hanson Kelley, E. W. Rodd, and Robert Mott, in the following proportions, viz: Three thousand six hundred and fifty shares shall belong to said Fleitas, one thousand shares to Francis H. Hatch, five hundred shares to Thomas J. Semmes, one hundred shares to J. J. Warren, one hundred shares to Samuel Jamison, one hundred shares to E. W. Rodd, fifty shares to Hanson Kelley, and five hundred shares to Robert Mott, which shall be deemed paid up to the amount of twenty dollars per share and on which said six thousand shares of stock no call for contribution shall be made until the other six thousand shares shall have been taken and shall have paid up twenty dollars per
133 share, and thereafter all the stock hereinbefore assigned to and held, as aforesaid, by the said Fleitas, Hatch, Warren, Jamison, Semmes, Kelley, Rodd, and Mott and their assigns and transferees and the other six thousand shares shall stand on the same footing and shall contribute equally, share and share alike, to the necessities and requirements of said corporation, in conformity to the provisions of article four of this charter.

Article sixth.

This association shall go into operation from and after the date of this act.

Article seventh.

This association shall have a corporate seal, the device of which shall be a sugar hogshead with the name of the corporation engraved around the same.

Article eighth.

These articles of association may be modified or altered and the capital stock may be increased or diminished to any sum not exceeding two million dollars nor less than six hundred thousand dollars in the manner provided by law, with the consent of three-fourths of the stock represented in general meeting of the stockholders convened for that purpose after thirty days' notice by publication in any newspaper of the city of New Orleans, but the capital stock shall never be diminished below twelve thousand shares until the six thousand shares of new stock shall have been taken and paid up twenty dollars per share, except by the voluntary consent of each stockholder.

134 Whenever any increase of capital stock shall be duly authorized ninety days' notice of the same shall be given in two daily newspapers published in said city, within which time stockholders shall have the privilege of taking additional shares in proportion to the amount of their stock, and any shares not taken

at the expiration of that time may be disposed of by the directors for the benefit of the association.

Article ninth.

All the business of this corporation shall be conducted and managed by a board of directors consisting of seven persons, each of whom shall hold, in his own right, fifty shares of the capital stock of the said association; but the said board of directors may be increased to twelve when the other six thousand shares shall have been taken.

Article ninth.

Amended at a general meeting of the stockholders held on the 26th of May, 1874, to read as follows, viz:

"All the business of this corporation shall be conducted and managed by a board of directors consisting of twelve persons, each of whom shall hold, in his own right, twenty shares of the capital stock of the said association."

Article tenth.

The following-named stockholders, viz., Francis B. Fleitas, Francis H. Hatch, Thomas J. Semmes, Samuel Jamison, John J. Warren, E. W. Rodd, and Hanson Kelly, shall compose and are hereby constituted the first board of directors, who shall, at their first
135 meeting, elect one of their number president; and said board shall serve until superseded by their successors, who shall be elected as provided in article eleventh.

Article eleventh.

On the third Monday of May, eighteen hundred and seventy-two, and annually thereafter an election of directors by the stockholders shall be held at the office of the corporation; for which election previous notice of at least ten days shall be given in two newspapers published in the city of New Orleans.

Article twelfth.

A plurality of votes (containing one vote for each share of stock voted upon) shall be sufficient to elect directors, who shall, at their first meeting after their election, choose one of their number for president of the association, who shall be elected by a majority of the whole board, and upon whom all citations and other legal processes shall be served.

It shall be the duty of the president to preside at all meetings of the board, and in case of his absence or inability to act the board shall elect one of their members president *pro tem.*, who shall, for the time being, exercise the full power of president.

All elections shall be by ballot, under the superintendence of inspectors appointed by the board from among the stockholders not directors at least one week prior to election.

Article thirteenth.

A majority of the board of directors shall be fully authorized
136 to do and perform all and every act and thing necessary for the business of the association, the protection of its rights, and the prosecution of its interests.

Article fourteenth.

Any director being about to absent himself for a period of six months or less may nominate a substitute in his stead, provided said substitute shall have in his own right not less than twenty-five shares of the capital stock of the company; and provided, also, that said substitute be elected by the board of directors for the time being.

Article fifteenth.

The board of directors shall appoint a superintendent and secretary and all clerks and agents and may remove the same at pleasure, and shall fix the salaries of all officers of the corporation and the amount of security that shall be required from any officers and agents.

Said board may also delegate such power in the transaction of the ordinary business of the company to committees of their own body or their officers or agents as they may deem expedient, and may also appoint agents within and without this State under such conditions as to them may seem proper; and they shall have power to make by-laws, rules, and regulations and to alter or amend the same whenever the interest of the corporation may require it; and shall have power to supply any vacancies that may occur in the board. Such vacancies may be declared on account of death, resignation,
want of requisite number of shares, insolvency, bankruptcy,
137 or absence without leave for three successive months from the regular meeting of the board.

Article sixteenth.

Books for the registry and transfer of shares of the capital stock shall be opened and kept subject to the restrictions directed by the by-laws. All transfers of shares shall be made on said books and signed by the shareholder or his attorney, and which said books the directory may close as often as convenience or expediency may require, but not for a longer period than ten days at a time.

Should any shareholder of stock desire to transfer the same previous to full payment having been made he shall be, and is hereby, permitted to do so by the substitution of the party purchasing.

Article seventeenth.

A failure from any cause to elect directors on the day named for that purpose shall not dissolve the association, but the directors then in office shall hold over until their successors are elected and qualified and until election is held, of which notice forthwith shall be

given, as provided in article 12, and continued until election be had.

Article eighteenth.

Each shareholder at all meetings for the election of directors and other purposes shall be entitled, directly or by proxy, to one vote on each share of stock held by him.

Article nineteenth.

Minutes of all proceedings of the board of directors shall
138 be kept by the secretary and verified by the president, and the president and secretary shall sign all notes, drafts, checks, certificates of stock, contracts, and all other evidences of debt of this corporation.

Article twentieth.

The board of directors may accept provisionally any power or privilege conferred on this association by any amendments of the laws under which the same is formed, or by the adoption of any other act or ordinance of the Legislature or city council; but the final acceptance of any such power or privilege shall be determined by a vote of a majority, in amount, of the stockholders.

Article twenty-first.

The liquidation of the affairs of this association shall be made by three commissioners, appointed by the stockholders at a meeting convened for that purpose after sixty days' previous notice in two newspapers published in New Orleans. Said liquidators shall be solvent persons, residents of this city, not indebted to this association; their terms of office shall be assigned; all necessary powers shall be conferred on them. The period of liquidation shall be fixed, as well as their compensation, in such manner as the stockholders may, by resolution, in general meeting convened, determine.

Article twenty-second.

The names and respective interests of the parties to this act are declared to be as follows, to wit:

139 Francis B. Fleitas, 3,650 shares, three hundred and sixty-five thousand dolllars	$365,000
Francis H. Hatch, 1,000 shares, one hundred thousand dollars	100,000
Thomas J. Semmes, 500 shares, fifty thousand dollars	50,000
Robert Mott, 500 shares, fifty thousand dollars	50,000
J. J. Warren, 100 shares, ten thousand dollars	10,000
Samuel Jamison, 100 shares, ten thousand dollars	10,000
Hanson Kelly, 50 shares, five thousand dollars	5,000
E. W. Rodd, 100 shares, ten thousand dollars	10,000
Making the number of 6,000 shares, six hundred thousand dollars	$600,000

All of which is preferred stock, deemed to be paid up to the amount of twenty dollars per share.

Books of subscription or stock shall be opened at such places and times as the board of directors may determine.

This done, signed, and passed in my office, in the city of New Orleans, on the day aforesaid, in the presence of William M. Geddes and Thomas Janney, witnesses of lawful age and domiciled in this city, who have signed with the parties and me, notary, after reading hereof.

ROBERT MOTT.
SAMUEL JAMISON.
F. B. FLEITAS.
E. W. RODD.
F. H. HATCH.
THOS. J. SEMMES.
J. J. WARREN.
HANSON KELLY.

CHAS. STRINGER,
Notary Public.

W. M. GEDDES.
THOS. JANNEY.

A true copy.
New Orleans, February 1st, 1870.

CHAS. STRINGER.
Notary Public.

(Here follows diagram marked page 140.)

141 & 142 *Judgment.*

Extract from the Minute Book.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana. November Term, 1887.

NEW ORLEANS, THURSDAY, *March 8th*, 1888.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

THE LOUISIANA CONSTRUCTION COMPANY
vs.
CITY OF NEW ORLEANS, on the Intervention and Third Opposition of the City of New Orleans. } No. 11449.

By reason of the verdict of the jury herein and in accordance therewith, it is ordered, adjudged, and decreed that there be judgment in favor of plaintiff, The Louisiana Construction Company, Limited, and against the City of New Orleans, dismissing the inter-

vention and third opposition of the city of New Orleans herein filed, with costs.

Judgment rendered March 8th, 1888.

Judgment signed March 31, 1888.

(Signed) EDWARD C. BILLINGS, *Judge.*

143 *Writ of Fieri Facias. Issued 28 March, 1887.*

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Fifth Circuit, Holding Sessions in and for the Eastern District of Louisiana.

The President of the United States to the marshal of the eastern district of Louisiana or his lawful deputy, Greeting:

You are hereby commanded to demand from the city of New Orleans the sum of fifty thousand dollars ($50,000), with 5% interest per annum thereon from the date of judicial demand, to wit, 30th day of September, A. D. 1886, until paid, less the sum of $2,969.80 (now on deposit by the city of New Orleans in the Louisiana National Bank to the credit of the Sherman and Lemarie bonus account), and clerk's cost, 11499, 95.50; 11449, 22.85; attorney's docket fees, 10.00 cash, which the Louisiana Construction Company, Limited, lately recovered by judgment of the circuit court of the United States for the fifth circuit and eastern district of Louisiana; and if
144 the same be not paid on demand, that then you cause the same to be made out of the personal estate of the said city of New Orleans in your district, if sufficient personal estate can be found therein; but if sufficient personal estate cannot be found in your district, that then you cause the same to be made out of the real estate of the said city of New Orleans in your district, and that you have those moneys before our said court to render to the said Louisiana Construction Company, Limited, for the judgment aforesaid, on the 70th day from the date hereof, together with this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 28 day of March, A. D. 1887, and 111 year of the Independence of the United States.

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

Marshal's Return.

Rec'd March 28, 1887, and in compliance with instructions from E. H. McCaleb, Esq., attorney for plaintiff, I did seize and levy upon the following-described property situated in the city of New Orleans, to wit:

All the right, title, and interest of The City of New Orleans, defendant herein, in and to the following property, to wit:

1. Square A, bounded by Custom-House and Bienville streets and the lines of the Louisville and the Nashville and Morgan
145 railroads and the Sugar landing, said square measuring 121 feet 2 inches on Bienville street and Custom-House street, 340

feet 3 inches on the line of said railroads, and 340 feet 6 inches and 3 lines on the line of said Sugar landing.

2. Square B, bounded by Custom-House, Bienville, — and the line of the Louisville and Nashville and Morgan railroads, said square measuring 120 feet front on Custom-House street, 80 feet 6 inches front on Bienville street, 308 feet 8 inches and three lines front on Front street, 153 feet front on —, and 171 feet 10 inches and 3 lines front on the line of said railroad.

3*a*. Square C, being a triangle of land bounded by Bienville, Conti, Front streets and the line of the Louisville and Nashville and Morgan railroads, measuring 64 feet 1 inch and 4 lines on Bienville street, 274 feet 0 inch and 3 lines on Front street, 271 feet 8 inches and 1 line on the line of said railroads, and coming to a front near the intersection on Front and Conti streets.

3*b*. Square D, bounded by Bienville, Conti —, the line of the Louisville and Nashville railroad, and the Sugar landing, measuring 92 feet 6 inches and 3 lines on each of said Bienville and Conti streets, by 330 feet 6 inches and 7 lines on the line of said railroads and 330 feet 0 inch and 2 lines on said Sugar landing.

4. Square E, bounded by Conti, St. Louis, Clay, and Front streets, said square being pentagonal in shape and measuring 119 feet 11 inches and 7 lines on Conti street, 74 feet 2 inches and 5 lines on St. Louis street, 309 feet 8 inches and 7 lines on Clay
146 street; and as to the two sides on Front street, 134 feet 0 inches and 5 lines as to one and 194 feet 2 inches and 7 lines as to the other.

5. All the right, title, and interest of the city of New Orleans, of every kind and nature, to the sheds, structures, buildings, and improvements in the said squares A, B, C, D, and E, as set forth in city ordinance No. 1528, N. S., approved Aug. 14, 1869, and in the notarial act passed before W. J. Castell, notary public, on Aug. 18, 1869, between said city and F. B. Fleitas and others, said right consisting—

1. Of the option to take said sheds and structures at one-half of their appraised cash value at the expiration of twenty-five years from November 1st, 1871; the right and power to appoint appraisers as designated in said ordinances and the contract for the purpose of determining said appraised cash value.

2. The option of extending the right to use said sheds and squares as designated in said ordinances and contracts for fifteen years subsequent to said Nov. 1st, 1896.

3. Of the right of reversion of said sheds to the city in full ownership after the expiration of said fifteen years' additional lease.

6. All the right, title, and interest of every kind and nature of the city of New Orleans in and to and arising under the contract passed before W. J. Castell, notary public, and F. B. Fleitas and others on Aug. 18, 1869, by virtue of city ordinance No. 1528,
147 N. S., which said contract has been transferred to the New Orleans Sugar Shed Company, and the terms of which lease been modified by ordinance No. 4492, N. S., including the right to receive under said contract 10 per cent. of the gross annual receipts

of said sugar shed company until November 1, 1896. Of said seizure I duly notified The City of New Orleans, defendant herein, as well as the N. O. Sugar Shed Company, as will more fully appear by notice of seizure and return thereon, marked A & B, respectively, for reference and made part of this return. Said seizure was also duly recorded on the day thereof in the office of the recorder of mortgages for the city of New Orleans and parish of Orleans, and, in accordance with instructions from plaintiff's attorney, I did advertise said property for sale in conformity with law. Said advertisements for said sale were inserted and published in the English language in the newspaper printed in English in the city of New Orleans and known as the New Orleans Picayune, and appeared therein on 5th, 12, 19, and 26 of April and on the 5th day of May, 1887, and in the French language in the newspaper printed in French in the city of New Orleans and known as the New Orleans Bee, and appeared therein on the 5, 12, 19, 26 of April and on the 5th day of May, 1887, the last-named day being the day fixed for said sale and being the full time required by law, announcing the said sale to take place on Thursday, the 5th day of May, 1887, at 12 o'clock m., at the main entrance to the custom-house, on Canal street, in the city of New Orleans. Notices to appoint appraisers were duly served upon the parties interested.

Appraisers were appointed, duly sworn, and made return — the proof of which proceedings, all of which is on file in my office.

148 On the day for the said sale, prior to the hour for said sale as advertised, being enjoined and restrained by order of this honorable court from proceeding further in the process for said sale or in the advertisement thereof until the bill of complaint filed herein by the city of New Orleans could be heard and determined, and the hour for said sale, so enjoined and restrained, having arrived, I proceeded to the place designated for said sale about to have been made and announced in a loud and audible voice that the said sale had been stayed and the causes for the staying of said sale.

I did also, on the 28th day of March, 1887, in accordance with instructions from plaintiff's attorney, proceed under garnishee process and make a general seizure in the hands of the New Orleans Sugar Shed Company, as will appear more fully by reference to notice of garnishee and return thereon written and made part hereof, marked "C" for reference, out of which garnishee nothing has as yet come into my hand. Under instructions from plaintiff's attorney the properties herein seized and described *is* being readvertised for sale, full return of which and my further acts under this writ will be made hereafter. I therefore return this writ, requesting the clerk of this hon. court to furnish me with a copy thereof, together with my return thereon.

New Orleans, June 4, 1887.

(Signed) R. B. PLEASANTS, *U. S. M'l*,
By W. B. LOGAN, *D'y Marshal.*

CLERK'S OFFICE.

149 I certify the foregoing to be a true copy from the original record in this office.

Witness my hand and seal of court, at the city of New Orleans, this 4th day of June, 1887.

[SEAL.] (Signed) E. R. HUNT, *Clerk*,
By H. J. CARTER, *D'y Clerk*.

Under instructions, in writing, received from plaintiff's attorney, the property herein seized and fully described in the foregoing original return on this writ was readvertised for sale at public vendue in conformity with law. The said advertisements for the said sale were published in the English language in the newspaper printed in English and published in the city of New Orleans and known as the New Orleans Picayune, and appeared therein on the 28th day of May and on the 2, 9, 16, 23, and 30th days of June, 1887, and in the French language in the newspaper printed and published in the French language in the city of New Orleans and known as the New Orleans Bee, and appeared therein on the 28th day of May and on the 2, 9, 16, 23, and 30 days of June, 1887, the last-named day, to wit, 30 June, 1887, being the day fixed for the said sale, and being the full time required by law, announcing the said sale to take place on Thursday, the 30th day of June, 1887, at the hour of 12 o'clock m., at the main entrance to the custom-house, on Canal street, in the city of New Orleans.

And, after having complied with all the previous legal requi-
150 sites, and the day of the said sale about to take place having arrived, I did, at the hour appointed for the said sale, repair to the place designated at which the said sale was to be made, to wit, the main entrance to the custom-house, on Canal street, in the city of New Orleans, and proceed to offer all of the said property so seized as hereinbefore set forth and described for sale at public auction, with exception of the square or plot of ground described as square "C" and known as a public park, of which exception announcement was made audibly by me by virtue of authority contained in written instructions received from plaintiff's attorney previous to the day of said sale and now on file in this office.

After reading in a loud and audible voice the advertisement of the said sale and the certificate of the register of conveyances, of even date of day of sale, as well as the certificate of the recorder of mortgages for the city of New Orleans and parish of Orleans, dated the day of the said sale, at the hour of 9 a. m., showing the mortgages and encumbrances bearing upon and resting against the property about to be sold, I cried the said property for sale at public auction; when, after duly crying the same, Isidore Newman, being the last and highest bidder, in the sum of fifty thousand dollars, the said property was adjudicated to the said Isidore Newman for the said sum and price of fifty thousand dollars. Of the said price of adjudication the purchaser paid me, in cash, the sum of four thousand dollars by agreement with plaintiff's attorney, whose consent
151 in writing to the purchaser's retaining the balance of pur-

chase price in his hand is now on file in this office. From the general seizure under garnishment process in the hands of the New Orleans Sugar Shed Company referred to in the original return on this writ and marked "C" for reference nothing having come into my hands, I therefore now, under instructions from E. Howard McCaleb, Esq., attorney for plaintiff, make this return of my doings under this writ.

Returned March 8th, 1888.

(Signed) R. B. PLEASANTS,
U. S. Marshal,
By W. B. LOGAN, *D'y M'l.*

Consent as to Amount of Bond for Writ of Error with Supersedeas. Filed 6 April, 1888.

A bond for $15,000.00 for supersedeas will be satisfactory in La. Construction Co. *vs.* City of N. O.

(Signed) E. HOWARD McCALEB,
Att'y for La. Con. Co., Limited, Plaintiff.

Motion for Writ of Error. Entered and Filed 6 April, 1888.

152 United States Circuit Court.

THE LOUISIANA CONSTRUCTION COMPANY
vs.
THE CITY OF NEW ORLEANS, Third Opponent and Intervener. } No. 11449.

On motion of Walter H. Rogers and Henry C. Miller, of counsel for the city of New Orleans, the third opponent and intervener, and on suggesting that the said third opponent and intervener is advised and believes that there is error to its prejudice in the final judgment herein rendered on the 8th March, 1888, and signed on the 31st March, 1888, in favor of the plaintiff herein and against the said city of New Orleans, dismissing its intervention and third opposition, seeking to have annulled the seizure and sale of the sugar sheds, right of reversion of the city thereto, and the ground on which said sheds rest, as claimed by the petition of intervention and third opposition, and on further suggesting that the third opponent and intervener desires to prosecute a writ of error from said final judgment to the Supreme Court of the United States—

It is now ordered that the city of New Orleans, the third opponent and intervener herein, be allowed a writ of error to review said final judgment, said writ to be supersedeas and stay of execution, upon the city of New Orleans furnishing a bond in the sum of fifteen thousand, $15,000, dollars, this being the amount agreed upon between the parties, conditioned as the law directs, and that the
153 bond, not to operate as a supersedeas, be fixed at the sum of five hundred, $500.00, dollars, said writ of error to be made returnable to the Supreme Court of the United States on the second Monday of October, 1888, according to law.

Bond for Writ of Error. Filed April 12, 1888.

Know all men by these presents that we, the City of New Orleans, as principal, and George Q. Whitney, as surety, are held and firmly bound unto the Louisiana Construction Company, Limited, L. E. Lemarie, Isidore Newman, R. B. Pleasants, U. S. marshal, and all others of any interest, obligees, in the full and just sum of fifteen thousand dollars, to be paid to the said The Louisiana Construction Company and others, aforesaid obligees, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 12th day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

Whereas lately at a circuit — of the United States, fifth judicial circuit, holding sessions in and for the eastern district of Lou-
154 isiana, in a suit depending in said circuit court, wherein The Louisiana Construction Company, Limited, *are* plaintiff and The City of New Orleans is defendant, The City of New Orleans, 3d opponent and intervener, and said company and others are defendants in 3 opposition and intervention, judgment was rendered against the City of New Orleans, 3 opponent and intervener, on the 8th and signed on the 31st March, 1888, and the said The City of New Orleans, 3 opponent and intervener, having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said The Louisiana Construction Company and others admonishing them to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said The City of New Orleans shall prosecute its writ to effect and answer all damages and costs if it fail to make plea good, then the above obligation to be void; else to remain in full force and virtue.

THE CITY OF NEW ORLEANS.
J. V. GUILLOTTE. [L. S.]
GEO. Q. WHITNEY. [L. S.]

Sealed and delivered in the presence of—
H. C. MILLER.

This bond approved.
April 12th, 1886.

EDWARD C. BILLINGS, *Judge.*

155 UNITED STATES OF AMERICA, }
Eastern District of Louisiana, } *ss:*

Personally appeared George Q. Whitney, who, being duly sworn, deposes and says that he is the surety on the within bond; that he

resides — No. 555 of St. Charles street, in New Orleans, parish of Orleans, State of Louisiana, and is worth the full sum of fifteen thousand $\frac{00}{100}$ over and above all his debts and liabilities and property exempt from execution.

GEO. Q. WHITNEY.

Subscribed and sworn before me this 12th day of April, 1888.
[SEAL.] BENJAMIN ORY,
Not. Pub.

Motion to Appoint Henry J. Carter to Serve Citation on U. S. Marshal. Entered and Filed 4 May, 1888.

United States Circuit Court.

LOUISIANA CONSTRUCTION CO., Limited, *vs.* THE CITY OF NEW ORLEANS *et als.* } No. 11449.

On motion of Henry C. Miller, of counsel for The City of New Orleans, the plaintiff in error, and upon suggesting that R. B. Pleasants, United States marshal, is one of the defendants in error in this case—

It is ordered that Henry J. Carter be appointed to serve upon said marshal the citation to him as one of the defendants in error in this case.

N. O., 4 May, 1888.
(Signed) EDWARD C. BILLINGS, *Judge.*

156 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 155 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of The Louisiana Construction Company *vs.* The City of New Orleans, on the intervention and third opposition of the City of New Orleans, No. 11449 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 20 day of July, A. D. 1888.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at

the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 20 day of July, A. D. 1888.

EDWARD C. BILLINGS, *Judge.*

157 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit and holding sessions for the eastern district of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between The Louisiana Construction Company, Limited, Isidore Newman, R. B. Pleasants, U. S. marshal, & Louis E. Lemarie and The City of New Orleans, rendered on the 8th March, 1888, and signed on the 31st March, 1888, in the suit entitled The Louisiana Construction Company, Limited, *vs.* The City of New Orleans, The City of New Orleans, third opponent and intervener, said company, Isidore Newman, R. B. Pleasants, U. S. marshal; Louis E. Lemarie, defendants in 3rd opposition, No. 11449 of the docket of the said circuit court, in favor of the said Louisiana Construction Company, Limited, and against the city of New Orleans, dismissing its intervention and third opposition, seeking to have annulled and set aside the seizure and sale of the sugar sheds, the right of reversion thereto of the city, and of the ground on which said sheds rest, as claimed in the petition of intervention and third opposition, a manifest error hath happened, to the great damage of the said The City of New Orleans, 3rd opponent and intervener, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Samuel F. Miller, associate justice of the said Supreme Court of the United States next in precedence, the office of Chief Justice being vacant, this 12th day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

[Seal U. S. Circuit for the 5th Circuit & Eastern District of La.]

E. R. HUNT,
Clerk of the United States Circuit Court
for the Eastern District of Louisiana.

[Endorsed:] United States circuit court. No. 11449. The Louisiana Construction Co., Limited, *versus* The City of New Orleans *et als.* Writ of error. Filed April 12, 1888. E. R. Hunt, clerk. Copy of writ of error lodged, in pursuance of the statute of the U. S., for defendants in error. He'y C. Miller, att'y for pl'ff in error. Ap'l 12th, 1888. For the Louisiana Construction Company *et al.*, — in error.

158 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit and holding sessions for the eastern district of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between The Louisiana Construction Company, Limited, Isidore Newman, R. B. Pleasants, U. S. marshal, and L. E. Lemarie, and The City of New Orleans, rendered on the 8th March, 1888, and signed on the 31 M'ch, 1888, in the suit entitled The Louisiana Construction Company, Limited, *vs.* The City of New Orleans, The City of New Orleans, third opponent and intervener, the said company, Isidore Newman, R. B. Pleasants, U. S. marshal, & L. E. Lemarie, def'd's in 3d opposition, No. 11449 of the docket of the said circuit court, in favor of the said company and against the city of New Orleans, dismissing its intervention and third opposition, seeking to have annulled & set aside the seizure and sale of the sugar sheds, the right of reversion thereto of the city, and of the ground on which said sheds rest, as claimed in the petition of intervention and third opposition, a manifest error hath happened, to the great damage of the said The City of New Orleans, 3d opponent and intervener, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Samuel F. Miller, associate justice of the said Supreme Court of the United States next in precedence, the office of Chief Justice being vacant, this 12th day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT,
Clerk of the United States Circuit Court
for the Eastern District of Louisiana.

[Endorsed:] United States circuit court. No. 11449. The Louisiana Construction Company, Limited, *versus* The City of New Orleans *et al.* Writ of error. Copy writ of error lodged, in pursuance of statute of U. S., for def'd'ts in error. Ap'l 12, 1888. For L. E. Lemarie, def't in error. Filed April 12, 1888. E. R. Hunt, clerk.

159 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit and holding sessions for the eastern district of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between The Louisiana Construction Company, Limited, Isidore Newman, R. B. Pleasants, U. S. marshal, & Louis E. Lemarie, and The City of New Orleans, rendered on the 8th March, 1888, and signed on the 31st March, 1888, in the suit entitled The Louisiana Construction Company, Limited, *vs.* The City of New Orleans, The City of New Orleans, third opponent and intervener, said company, Isidore Newman, R. B. Pleasants, U. S. marshal, Louis E. Lemarie, defendants in 3rd opposition, No. 11449 of the docket of the said circuit court, in favor of the said Louisiana Construction Company, Limited, and against the city of New Orleans, dismissing its intervention and third opposition, seeking to have annulled and set aside the seizure and sale of the sugar sheds, the right of reversion thereto of the city, and of the ground on which said sheds rest, as claimed in the petition of intervention and third opposition, a manifest error hath happened, to the great damage of the said The City of New Orleans, 3rd opponent and intervener, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Samuel F. Miller, associate justice of the said Supreme Court of the United States next in precedence, the office of Chief Justice being vacant, this 12th day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT,
Clerk of the United States Circuit Court
for the Eastern District of Louisiana.

[Endorsed:] United States circuit court. No. 11449. The Louisiana Construction Company, Limited, *versus* The City of New Orleans *et als.* Writ of error. Copy of writ of error lodged, in pursuance of the statute of the U. S., for defendants in error. He'y. C. Miller, att'y for pl'ff in error. Ap'l 12, '88. For Isidore Newman, def't in error. Filed April 12, 1888. E. R. Hunt, clerk.

160 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit and holding sessions for the eastern district of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between The Louisiana Construction Company, Limited, Isidore Newman, R. B. Pleasants, U. S. marshal, & Louis E. Lemarie, and The City of New Orleans, rendered on the 8th March, 1888, and signed on the 31st March, 1888, in the suit entitled The Louisiana Construction Company, Limited, *vs.* The City of New Orleans, The City of New Orleans, third opponent and intervener, said company, Isidore Newman, R. B. Pleasants, U. S. marshal, Louis E. Lemarie, defendants in 3rd opposition, No. 11449 of the docket of the said circuit court, in favor of the said Louisiana Construction Company, Limited, and against the city of New Orleans, dismissing its intervention and third opposition, seeking to have annulled and set aside the seizure and sale of the sugar sheds, the right of reversion thereto of the city, and of the ground on which said sheds rest, as claimed in the petition of intervention and third opposition, a manifest error hath happened, to the great damage of the said The City of New Orleans, 3rd opponent and intervener, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Samuel F. Miller, associate justice of the said Supreme Court of the United States next in precedence, the office of Chief Justice being vacant, this 12th day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT,
Clerk of the United States Circuit Court
for the Eastern District of Louisiana.

[Endorsed:] United States circuit court. No. 11449. The Louisiana Construction Company, Limited, *versus* The City of New Orleans *et als.* Writ of error. Copy of writ of error lodged, in pursuance of the statute of the U. S., for defendants in error. Ap'l 12, '88. He'y C. Miller, att'y for pl't'ff in —. For def't in error, R. B. Pleasants, U. S. marshal. Filed April 12, 1888. E. R. Hunt, clerk.

161 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to the Louisiana Construction Company, Limited, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein The City of New Orleans, third opponent and intervener, is the plaintiff in error and you are the defendant in error, the other defendants in error being Isidore Newman, R. B. Pleasants, U. S. marshal, and L. E. Lemarie, to show cause, if any there be, why the judgment rendered against the said The City of New Orleans, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, this 12th day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

EDWARD C. BILLINGS, *Judge.*

162 [Endorsed:] R. For Lu. Construction Company. Serve on president of corporation or at the office of corporation. United States circuit court, eastern district of Louisiana. No. 11449. The Louisiana Construction Company, Limited, *vs.* The City of New Orleans. Citation. No. —. U. S. circuit court, eastern district of Louisiana. Filed May 5, 1888. E. R. Hunt, clerk.

Marshal's Return.

Received Ap'l 21, 188–, by the U. S. marshal and on the 27th day of April, 1888, I served a true copy of the citation on which this return is endorsed on E. H. McCaleb, Esq., attorney of the Louisiana Construction Co., Limited, one of the defendants in error, by delivering said copy to E. H. McCaleb in person, at his office, in this city, on said 27th day of April, 1888, said corporation having no domicile or residence or president or other officer in this city on whom service could be made, but being a foreign corporation, domiciled and resident out of the State, none of its officers being within this city or State, but domiciled and resident out of the State of Louisiana.

Returned May 5th, 1888.

R. B. PLEASANTS,
U. S. Marshal,
By D. J. DELANEY, *D'y M.*

LOUISIANA CONSTRUCTION CO., Limited,

vs.

CITY OF NEW ORLEANS.

Personally appeared before me, the undersigned authority, D. J. Delaney, deputy United States marshal, who, being duly sworn, deposes and says that on the 27th day of April, 1888, he delivered a copy of the citation in this suit, as stated in the foregoing return, to E. H. McCaleb, Esq., attorney of record of Louisiana Construction Co., Limited, one of the defendants in error, said corporation having no domicile or residence or president or other officer in this city or State on whom service could be made, but being a foreign corporation, domiciled and residing out of the State of Louisiana, and none of its officers being within the State, but domiciled and resident out of the State of Louisiana.

D. J. DELANEY.

Subscribed and sworn before me 5th May, 1888.

{ Seal Thomas McC. Hyman, Commissioner U. S. Circuit Court, Eastern District Louisiana. }

T. McC. HYMAN,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

163 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Louis E. Lemarie, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein The City of New Orleans, third opponent and intervener, is the plaintiff in error and you are one of the defendants in error, to show cause, if any there be, why the judgment rendered against the said The City of New Orleans, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, this 12th day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

EDWARD C. BILLINGS, *Judge.*

164 [Endorsed:] R. For L. E. Lemarie. United States circuit court, eastern district of Louisiana. No. 11449. The Louisiana Construction Company, Limited, *vs.* The City of New Orleans *et als.* Citation. No. —. U. S. circuit court, eastern district of Louisiana. Filed May 5, 1888. E. R. Hunt, clerk.

Marshal's Return.

Received Ap'l 21, 188–, by the U. S. marshal and on the 23d day of April, 1888, I served a copy of the citation on which this return is endorsed on L. E. Lemarie, Esq., one of the defendants in error in this case, by delivering the same in person to him at his office in this city.

Returned May 5th, 1888.

R. B. PLEASANTS,
U. S. Marshal,
By D. J. DELANEY,
D'y Marshal.

Form of Affidavit to be Appended to Citation to L. E. Lemarie.

LOUISIANA CONSTRUCTION CO., Limited,
vs.
CITY OF NEW ORLEANS.

Personally appeared before me, the undersigned authority, D. J. Delaney, deputy United States marshal, who, being duly sworn, deposes and says that on the 23d day of April, 1888, he delivered a copy of the citation in this suit, as stated in the foregoing return, to E. L. Lemarie, one of the defendants in error in this case, by delivering said copy to him in person, at his office, in this city, on said 23d day of April, 1888.

D. J. DELANEY.

Subscribed and sworn before me 5th May, 1888.

{ Seal Thomas McC. Hyman, Commissioner U. S. Circuit Court, Eastern District Louisiana. }

T. McC. HYMAN,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

165 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Isidore Newman, one of def'd'ts in error, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein The City of New Orleans, third opponent and intervener, is the plaintiff in error and you are one of the defendants in error, the other defendants in error being The Louisiana Construction Company, R. B. Pleasants, U. S. marshal, and L. E. Lemarie, to show cause, if any

there be, why the judgment rendered against the said The City of New Orleans, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel F. Miller, associate *Chief* justice of the Supreme Court of the United States, this 12th day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

EDWARD C. BILLINGS, *Judge.*

166 [Endorsed:] R. For I. Newman. United States circuit court, eastern district of Louisiana. No. 11449. The Louisiana Construction Company, Limited, *vs.* The City of New Orleans *et als.* Citation. No. —. ——, eastern district of Louisiana. Filed May 5, 1888. E. R. Hunt, clerk.

Marshal's Return.

Received Ap'l. 21, 188–, by the U. S. marshal and on the 21st day of April, 1888, I served a copy of the citation on which return is endorsed on Isidore Newman, Esq., one of the defendants in error in this case, by delivering the same in person to him at his office in this city.

Returned May 5th, 1888.

R. B. PLEASANTS,
U. S. Marshal,
By D. J. DELANEY,
D'y M'l.

Affidavit of Service to be Appended to Citation to Newman.

LOUISIANA CONSTRUCTION CO., Limited,
vs.
CITY OF NEW ORLEANS.

Personally appeared before me, the undersigned authority, D. J. Delaney, deputy United States marshal, who, being duly sworn, deposes and says that on the 21st day of April, 1888, he delivered a copy of the citation in this suit, as stated in the foregoing return, to Isidore Newman, Esq., one of the defendants in error in this case, by delivering said copy to Isidore Newman, Esq., in person, at his office, in this city, on said 21st day of April, 1888.

D. J. DELANEY,

Subscribed and sworn before me 5th May, 1888.

{ Seal Thomas McC. Hyman, Commissioner U. S. Circuit Court, Eastern District Louisiana. }

T. McC. HYMAN,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

167 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to R. B. Pleasants, U. S. marshal, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein The City of New Orleans, third opponent and intervener, is the plaintiff in error and you are one of the defendants in error, the other defendants in error being The Louisiana Construction Company, Limited, Isidore Newman, and L. E. Lemarie, to show cause, if any there be, why the judgment rendered against the said The City of New Orleans, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, this 12th day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

EDWARD C. BILLINGS, *Judge.*

168 [Endorsed:] R. B. Pleasants, U. S. marshal. United States circuit court, eastern district of Louisiana. No. 11449. The City of New Orleans, pl'ff in error, *vs.* The Louisiana Construction Company, Limited, *et al.*, defendants in error. For R. B. Pleasants, U. S. marshal, one of the def'ts in error. Citation.

Marshal's Return.

Received Ap'l 21, 188–, by the U. S. marshal, and—

Received May 5, 1888, by Henry J. Carter, appointed by order of court to serve citation in this case on R. B. Pleasants, United States marshal, and on the 8th day of May, 1888, I served a copy of the citation on which this return is endorsed on R. B. Pleasants, United States marshal, one of the defendants in error in this case, by handing the same to him in person in the city of New Orleans.

HENRY J. CARTER.

Personally appeared before me, the undersigned authority, Henry J. Carter, duly appointed to serve the citation in this case upon R. B. Pleasants, United States marshal, by authority of the order of the court hereto attached; and affiant deposes and says that on May 8th, 1888, he delivered a copy of the citation in this suit, as set forth in the foregoing return, to said R. B. Pleasants, United States marshal, one of the defendants in error in this case, by delivering said copy to him in person, in the city of New Orleans, on said May 8th, 1888.

HENRY J. CARTER.

Subscribed and sworn before me May 8, 1888.

{Seal E. R. Hunt, Commissioner U. S. Circuit Court, Eastern District Louisiana.}

E. R. HUNT,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

Endorsed on cover: E. Louisiana C. C. U. S. No. 1104. The City of New Orleans, plaintiff in error, *vs.* The Louisiana Construction Company, Limited, Louis E. Lemarie, Isidore Newman, and R. B. Pleasants, U. S. marshal. Filed September 15, 1888.

SUPREME COURT.

OF THE UNITED STATES.

No. 1104.

THE CITY OF NEW ORLEANS, Plaintiff in Error.

versus

THE LOUISIANA CONSTRUCTION COMPANY, (Limited), Defendant in Error.

BRIEF FOR THE CITY OF NEW ORLEANS—PLAINTIFF IN ERROR ON MOTION TO DISMISS.

HENRY C. MILLER,
Of Counsel for Plaintiff in Error.

F. F. Hansell & Bro., Print, 28 & 30 Camp St. N. O.

SUPREME COURT.

OF THE UNITED STATES.

No. 1104.

THE CITY OF NEW ORLEANS, Plaintiff in Error.

versus

THE LOUISIANA CONSTRUCTION COMPANY, (Limited), Defendant in Error.

BRIEF FOR THE CITY OF NEW ORLEANS—PLAINTIFF IN ERROR ON MOTION TO DISMISS.

STATEMENT OF THE CASE.

The Louisiana Construction Company (Limited), a judgment creditor of the City of New Orleans, seized upon certain spaces constituting a portion of the levee or landing covered by the sugar sheds, erected under an ordinance and lease of the city to shelter from the weather the sugar and molasses landed on the public levee.

Under the lease the lessees were to erect the sheds. The right was given them to demand certain charges upon the sugar and molasses sheltered by the sheds, and the sheds were to revert and belong

to the city at the end of the lease. The levee is *locus publicus*, and the sheds were to serve the public uses to which the levee is dedicated. The object of the lease and ordinance of the Council was to provide sheds to afford necessary accommodations to the commerce of the port. The seizure was of the spaces of the public levee on which the sheds were erected, and of the reversionary right of the city to the sheds. See lease and ordinance record. pp. See bill of exceptions. Rec p. When property not liable to seizure, is seized on execution, the remedy provided by the law of Louisiana is a third opposition. When, notwithstanding the oppposition, the property is sold, if the opposition is sustained, the seizure and sale is annulled and the property restored. In this case in spite of the opposition the seizure was persisted in and the property was sold under execution. The opposition may be accompanied with an injunction, if security be given, to stop the sale. But without the injunction, the opposition is the legal remedy to set aside the wrongful seizure and obtain the restoration of the property. See Code of Practice, articles 395, 396, 397, 398, 499, 400.

The City of New Orleans is the administrator for the public of the streets, public squares and other public places. It has the right to protect public places from obstruction and appropriation for private uses. See Civil Code of Louisiana, arts 449, 453, 454, 453. City Charter of 1870, Session Acts, pp. 30, 35, sec. 12, par 2; City Charter of 1882,

Session Acts of 1882, p. 21, sec 8; New Orleans vs. Metzinger, 3d Martin's Louisiana Report, pp. 296, 303; Mayor vs Magnan, 4th Martin's Louisiana Reports, pp. 2, 10; Shepherd vs. Municipality No. 3, 6th Robinson's Louisiana Reports, p. 349; Carrollton Railroad vs. Winthrop, 5th Louisiana Reports, p. 36.

When the seizure was made of the public levee and sheds upon it, the city availed itself of its legal remedy and filed a third opposition. In the opposition the city alleged the spaces of ground and the sheds were *locus publicus*; that the ground was public and that the sheds were placed thereon for public uses, to which the levee was devoted; that neither the spaces of ground, the sheds or the reversion of the city to the sheds was liable to seizure and the opposition asked for judgment annulling and setting aside the seizure and sale of the property. The opposition was served on the plaintiff in execution, the Marshal, and after the property was sold under execution the purchaser was made a party. Code of Practice, articles 395, 398, 400; see Opposition, Record, p. 9; Supplemental Opposition, p 13. On the trial of the opposition judgment was rendered maintaining the seizure and sale, and to reverse that judgment the City obtained the writ of error which brings the case before the Court. The ground

of the motion to dismiss is that the suit was of Equity cognizance and should have been brought here by appeal.

ARGUMENT.

It is elementary and the statement is enough, that streets, public squares, levees and other public places are not liable to seizure. They belong to the public for the public uses to which they are dedicated. The character as *locus pnblicus* of the space between the front row of houses of this City and the Mississippi river, as constituting the quai or levee, embracing the ground in controversy, has been recognized by judicial decisions. See De Armas vs New Orleans, 5th Louisiana. pp 132, 174; New Orleans vs Hopkins, 13th Louisiana Reports, pp. 328, 321; United States vs. New Orleans, 10th Peters, pp. 710, 717, 718. The seizure and sale in this case of the ground in controversy, was the seizure of property not belonging to the City of New Orleans, but to the public.

The remedy given by the Louisiana law to the aggrieved party in the case of wrongful and illegal seizure under execution *i. e.*, of third opposition, is adequate. It is competent to set aside the seizure and restore the property, even if sold under the execution. It is competent

to secure damages It may be cumulated with an injunction, so as even to stop the sale, but without the injunction the opposition sets aside the seizure and restores the property. To this legal remedy the City resorted. No objection could be made to the mode of proceeding and none was made. There was a trial at law before the jury, and the case comes here by writ of error on questions of law presented by the exceptions to the charge of the Court. After all this, comes the objection from the defendant in error, that the proceeding was in Equity, not at law, and that the case should have been brought up by the appeal. The answer is, the remedy was at law, and the case was properly brought here by error. This Court has decided in a Louisiana case, that the remedy to procure relief from an illegal seizure is at law, not in Equity, and there is manifestly no ground whatever for the motion to dismiss. If it could be deemed that the City should have filed a bill in Equity, the dismissal would be without prejudice, and with reservation of the right to proceed in Equity as was done in the case cited in 99th, United States. But it is not apprehended the remedy of writ of error can be questioned. See 3d opposition and supplemental opposition, Record, pp. 9, 13 ; see Louisiana Code of Practice, articles 395, 396, 397, 398, 399, 400, Van Norden vs. Morton, 99th U. S., 398.

The Court is referred to the brief on the motion to affirm, filed with this brief for the fuller development of the case.

It is submitted the motion to dismiss should be overruled.

Respectfully submitted,

HENRY C. MILLER,

Of Counsel for Plaintiff in Error.

Supreme Court U. S.
FILED
NOV 19 1888
JAMES H. McKENNEY,
CLERK

UNITED STATES SUPREME COURT.

No. 1104.

THE CITY OF NEW ORLEANS, PLAINTIFF IN ERROR,

vs.

THE LOUISIANA CONSTRUCTION COMPANY, (LIMITED).

Brief for the City of New Orleans on the motion to dismiss or affirm.

CARLETON HUNT,
HENRY C. MILLER,
Of Counsel for the City of New Orleans.

F. F. Hansell & Bro., Print, 28 & 30 Camp St. N. O.

UNITED STATES SUPREME COURT.

No. 1104.

THE CITY OF NEW ORLEANS, PLAINTIFF IN ERROR,

vs.

THE LOUISIANA CONSTRUCTION COMPANY, (LIMITED).

Brief for the City of New Orleans on the motion to dismiss or affirm.

STATEMENT OF THE PLEADINGS AND FACTS.

The City of New Orleans filed an opposition in the United States Circuit Court to set aside the seizure under execution issued in the suit of the Louisiana Construction Company vs. the City of New Orleans. The seizure was of certain spaces of ground forming part of the public levee, the Sugar sheds extending over them and the reversionary right of the City in the sheds. The third opposition is the legal remedy prescribed by the laws of Louisiana to set aside and annull the

seizure under execution of property not liable to seizure; the seizing creditor and the Marshal are required to be notified, the purchaser is also made party; if notwithstanding the opposition the property is sold under execution, and if the opposition is sustained, the seizure is set aside. the property seized is restored and any sale of it, under the execution is annulled. In this case the opposition charged that the spaces of ground with the sheds over them seized were not liable to seizure, for the debt of the City, because the ground was *locus publicus*, a part of the public levee necessary for the purpose of commerce, and at and prior to the time of seizure was and at all times in actual public use, as the levee or landing for the sugar and molasses brought to this port for sale by steamboats and other vessels. In spite of this opposition the property was sold under the execution, and Isidore Newman became the purchaser. In due course the opposition was tried, and judgment rendered against the City, maintaining the seizure and the sale. To reverse that judgment the City sued out this writ of error. See the opposition Record p. 913. Judgment, Record p. 395, 70 *et seq.* Louisiana Code of Practice, Article 395, 396, 397, 398, 400.

The levee is that portion of ground which lies between the front row of houses of the the city, and the Mississippi River. The plans of the City

from a very early period, brought up with the bills of exceptions and the bills show that this levee or *quai* was *locus publicus* at and prior to the cession of Louisiana. The space constituting this levee was recognized as dedicated to public use in the early case decided by this Court in 1836. 10th Peten p. 662. This levee enlarged by the batture or accretion, is used to receive the products brought to the City by the commerce of the port and deposited on the levee, and the part of this levee seized upon in this case, at and prior to the time of the seizure, was in actual public use for the sugar and molasses landed from steamboats and other vessels. For a long time there was no protection from the weather for the sugar and molasses, landed on the levee. In 1869, however, the common Council of the City, to secure proper facilities for the commerce of the port, passed an ordinance providing for the lease to J. B. Fleitas or assigns, of the spaces of ground used as the sugar and molasses landing, the period of the lease being twenty-five years. The contract of lease, stipulated that the lessees should erect sheds over these spaces to receive under them the sugar and molasses; for the protection thus afforded the lesses were to have the right to demand certain fixed charges, *i. e.*, shelter charges on all sugar and molasses received under the sheds; ten per cent of all these charges were to accrue to the City and the sheds were to

revert to the City at the end of the lease. Under the ordinance and lease the sheds were erected in 1869, and the sheds and spaces, have ever since been used as provided in the ordinances and lease See plans of the City 1728, 1812, and others brought up with the bills, but it suffices to state in these plans the spaces between the front row of houses and the river is depicted as the *quai* or levee. The prominent question being: whether by the erection of these sheds under the authority of the common Council, "to afford shelter to the sugar and molasses received at this port," the levee of the City has been changed in its character from *locus publicus* to private property, so as to make it subject to seizure and sale for debt, it has been deemed proper to print the ordinances and lease in the appendix. See Lease and Ordinances, Record, pp. 44 49 52; Appendix, pp. 1 7 8.

On the trial of the opposition, the bill of exception recites: that the seizure and sale under execution of the ground, sheds and reversionary right of the City, being shown: the character of the ground as *locus publicus* dedicated to the public and in public use as the Sugar Landing at and long prior to the seizure and sale being also established; there being in evidence the ordinances and lease of the City of New Orleans of this Sugar Landing to J. B. Fleitas or assigns for twenty-five years, the ordinances and

lease being passed "to afford shelter to the sugar and molasses received at the port of New Orleans," and to this end the lease providing for the erection of the Sugar Sheds upon the leased ground or landing, the lessees to have the right to exact shelter charges on all sugar and molasses received under the sheds, the City to receive ten per cent. of these charges as a consideration for the lease, and the shed to revert to the City at the end of the lease; it being proved also that the sheds were erected in 1869, and since have been used as provided in the ordinance and lease, and were in such use when seized and sold, and all other evidence being offered requisite to sustain the allegations in the opposition of the City and pertinent to the issues raised by the opposition, thereupon the Counsel for the City of New Orleans requested the Court to charge the jury upon the issues of law; and the Court was asked to instruct the jury to the effect stated in the three following distinct and separate propositions:

That the character of *locus publicus* impressed upon ground within the City of New Orleans devoted to public use cannot be changed except by an act of the Legislature of the State authorizing said change, and hence that the City of New Orleans, without such legislative authority, had no power to change the character of the *locus publicus*, and thereby make said *locus publicus* subject to seizure and sale on execution for the debts of the city.

That if the jury find from the evidence that the four squares or spaces of ground involved in this controvessy, seized and sold to Isidore Newman by the United States Marshall under the execution in the suit of the Louisiana Construction Company vs. the City of New Orleans, was *locus publicus* as a portion of the public levee of this City, dedicated to the common use of the inhabitants to serve the public purposes of a levee and landing place for the sugar and molasses brought to this port by steamboats and other vessels navigating the Mississippi river; and if the jury further find that in 1869 the City of New Orleans leased said spaces for the term of twenty-five years under the ordinance of the City Council and the contract with the lessees that they should erect over said spaces sugar sheds for the accommodation and protection of the aforesaid sugar and molasses landed from said steamboats and other vessels, the lessees to have the right to collect dues upon the sugar and molasses deposited under said sheds for and in consideration of the accommodation and protection afforded by said sheds to said sugar and molasses, the city to be paid a percentage of said dues annually, and the sheds to revert and belong to said city at the end of said lease, as appears by said ordinances and contract made part of this bill; and if the jury find that said sheds were so constructed, and at and before the date of said adjudication and ever since the year 1869, the said spaces ot ground and sheds were used for said purposes and for no other purposes; then the jury are instructed that the erection of said sheds upon and the use of said spaces as provided by said contract and ordinances, did not change the character of said spaces as part of the public levee or *locus publicus*, and make said spaces and sheds over them liable to seizure and sale on execution for the debts of the city, and any such seizure and adjudication was illegal and passed no title to the purchaser.

That if the jury find from the evidence that the four squares or spaces of ground involved in this controversy, seized and ad-

judicated to Isidore Newman by the United States Marshall under the execution in the suit of the Louisiana Construction Company vs. the City of New Orleans, was *locus publicus* as a portion of the public levee of this city, dedicated to the common use of the inhabitants of the City, to serve the public purposes of a levee and landing place for the sugar and molasses brought to this port by steamboats and other vessels navigating the Mississippi river ; and if the jury further find that in 1869, the City of New Orleans leased said spaces for the term of twenty-five years, under ordinances of the City Council and the contract with the lessees that they should erect over said spaces sugar sheds for the accommodation and protection of the aforesaid sugar and molasses landed from said steamboats and other vessels, the lessee to have the right to collect charges upon the sugar and molasses deposited under said sheds, for and in consideration of the accommodation and protection afforded by said sheds to said sugar and molasses, the city to be paid a percentage of said dues annually, and the sheds to revert and belong to said city at the end of said lease, as appears by the said ordinances and contract, a copy of which is herewith filed and marked E F, made part of this bill ; and if the jury find that said sheds were so constructed, and at and before the date of said adjudication, ever since the year 1869, the said spaces of ground and sheds were used for said purpose, and for no other purposes ; then the jury are instructed that the aforesaid right of reversion of the said city to said sheds erected over said *locus publicus* was not liable to be seized and sold on execution for the debts of the city, and the seizure and adjudication of said right of reversion was illegal and passed no title to the purchaser.

Each of these propositions separately asked to be given to the jury, were each refused by the Court, and to each refusal, exception was taken as stated in the bill. Instead of charging these propositions the Court charged as follows :

The jury are instructed as matters of law:

"1st. The spaces upon which the sugar sheds the reversion of the title to which has been seized under a writ of *fieri facias* in this case, was prior to August 14th, 1869, upon the undisputed facts established a *locus publicus:*

"2nd. That by the undisputed evidence it is established that said space was a portion of what is called the "batture," which is alluvial land between that portion of the City of New Orleans and the Mississippi River, and was a *locus publicus* at the time when Louisiana was acquired by the United States."

"There is no doubt of the correctness of the general proposition, that a public place is inalienable except by the sovereign, but a public place which is a portion of the batture according to the well settled jurisprudence of this State, has a distinctive quality impressed upon it, and may be withdrawn from the use of the public by the City. This qualification is seen to be a public necessity when we consider that by the action of the vast stream which half encircles the City the levees may be so widened as that unless a portion of them were used for buildings, and the inhabited City extended over them, the City itself would possibly be left at an inconvenient distance from the river. Accordingly we find, both in the decisions of the highest tribunal of the State, and in the act of the Legislature, a clear recognition of the authority of the City to withdraw from the public use any portion of the batture which it may deem no longer necessary to be held for that purpose."

"Therefore the Court instructs you that it was lawful for the City of New Orleans to withdraw the said space from the public and to make it private property, while it was a *locus publicus.* The fee was in the City and the use was in the public and the question of fact for you to decide is whether the City did not by the contract or lease of the date of August 14th, 1869, withdraw said space from the public use as being no longer necessary for the public."

"It is to be observed that the said contract gives to the grantee or lessee the "exclusive right of using the public spaces" and gives to him "undisturbed possession of said public spaces and the sheds thereon erected," said sheds are to be for the purpose of storing sugar and molasses; there is no condition or requirement in said grant or lease which requires the said grantee or lessee to receive up to the capacity of the sheds the sugar and molasses of any person offering or which prevents him from any degree of discrimination, *i. e*, he may store the products of one man and refuse those of another, although his store is not full."

"The contract reserves a royalty as a rent."

"The possession thus granted is to continue for the period of twenty-five years."

"The contract protected the public by the provision that 'the sheds should not be not located more than one hundred and fifty feet to the present wooden work or wharves.'"

"If you find this contract was executed by the City of New Orleans and was accepted by the grantee or lessee and that he went into possession at the time of its execution and ever since remained under it in possession, and there is no dispute about these facts, then the Court instructs you there has been such a change in the destination of the property in question, such a withdrawal of it from the public as makes it properly hold by the City for its own use and not that of the public, and makes its reversion liable to seizure on the part of a creditor of the City of New Orleans and your verdict would be for the plaintiff in the writ and against the Intervenor and third opponent."

The Counsel for the City in excepting to the refusal to charge each of the propositions requested, excepted also to that portion of the charge as given, enclosed in the side lines.

The Court in signing the bill of exceptions, added the following :

The Judge in allowing this bill of exceptions stated:

The question at issue, as appears by the pleadings, was, whether the space occupied by the Sugar Sheds and the right to it, subject to the lease specified in the instructions given by the Court to the jury, were liable to seizure and sale under a writ of *fieri facias* sued out by a judgment creditor of the City of New Orleans.

The testimony given at the trial is correctly stated in this bill.

The counsel for the intervenor and third opponent asked the Court to give the instructions presented in the requests, as stated in the bill. The Court refused these instructions in the manner and form as requested except so far as embodied in those which were given as stated in the bill.

A bill of exceptions were taken to those given, and to the two propositions contained in the instruction given as hereinafter stated.

The questions presented by the exceptions are two:

1st. Has the City of New Orleans the power, lawfully, to withdraw any portion of the *batture* from public use, change its destination, and make it private property?

2nd. If yes, did the City exercise this power and make the space in question private property, by the execution of the lease for twenty-five years and the grant of possession under it?

Both these questions the Court, in its instructions, answered in the affirmative, and the bills of exception presents these two propositions so given as intructions to the jury.

Aud since the matters herein stated do not appear by record this bill is allowed and signed.

EDWARD C. BILLINGS, Judge.

Record pp. 25 et seq

The instructions asked by the counsel for the City, being refused, the case went to the jury upon the charge of the Court and the result was a verdict and judgment dismissing the opposition of the City and maintaining the seizure and sale of the property in controversy. See judgment, Record pp. 70

Then followed the writ of error by the City of New Orleans.

ASSIGNMENT OF ERRORS.

1st The Court erred in refusing to instruct the jury as requested by the counsel for the plaintiff in error, the City of New Orleans.

That the character of the *locus publicus* impressed upon ground within the City of New Orleans, devoted to public use, cannot be changed except by an act of the Legislature of the State authorizing said change, and hence that the City of New Orleans without such legislative authority, had no power to change the character of *locus publicus*, and thereby make it subject to seizure and sale on execution for the debts of the City.

the error in this respect being that the instruction requested and refused, affirmed a correct legal proposition pertinent to the issue before the jury, of the power of the City with respect to places dedicated to the public and in public use; and the refusal by implication erroneously instructed the jury that the City could of its own power and without legislative authority, *i. e.*, from the State, change *locus publicus* to private property, liable to be seized and sold under execution for the debts of the City.

2nd. The Court erred in refusing to instruct the jury as requested by the counsel for the plaintiff in error, the City of New Orleans.

That if they find from the evidence that the four squares or spaces of ground involved in this controversy, seized and sold to Isidore Newman by the United States Marshall under the execution in the suit of the Louisiana Construction Company vs. the City of New Orleans, were *locus publicus* as a portion of the public levee of this city, dedicated to the common use of the inhabitants of the city to serve the public purposes of a levee and landing place for the sugar and molasses brought to this port by steamboats and other vessels navigating the Mississippi river; and if the jury further find that in 1869 the City of New Orleans leased said spaces for the term of twenty-five years under ordinances of the City Council and contract with the lessees that they should erect over said spaces sugar sheds for the accommodation and protection of the aforesaid sugar and molasses landed from steamboats and other vessels, the lessees to have the right to collect charges upon the sugar and molasses deposited under said sheds for and in consideration of the accommodation and protection afforded by said sheds to said sugar and molasses, the city to be paid a percentage of said dues annually, and the sheds to revert and belong to said city at the end of said lease, as appears by said ordinances and contract made part of the bill; and if the jury find that said sheds were so constructed at and before the date of said adjudication, and ever since the year 1869, the said spaces of ground and sheds were used for said purposes, and for no other purposes; **then the jury are instructed that the erection of said sheds upon and the use of said spaces, as provided by said contract and ordinances, did not change the character of said spaces as part of the public levee or *locus publicus*, and make said spaces**

and sheds over them liable to seizure and sale on execution for the debts of the city, and any such seizure and adjudication was illegal and passed no title to the purchaser.

the error in this respect being, that the instruction requested and refused, stated a correct legal proposition, pertinent to the issue in reference to the effect of the erection under the authority of the Common Council of sheds upon the levee or landing to afford necessary facilities for the commerce of the port, provided by the ordinances of the Council and lease; and the refusal to give the instructions was equivalent to charging the jury, that the ordinance and lease of the sugar landing to secure sheds to shelter from the weather, products landed on the levee, transformed the public levee dedicated to the public and in actual public use before and after the erection of the sheds, into private property and subjected the public levee to seizure and sale.

3rd. That the Court erred in refusing to instruct the jury.

That if they find from the evidence that the four squares or spaces of ground involved in this controversy, seized and adjudicated to Isidore Newman by the United States Marshall under the execution in the suit of the Louisiana Construction Company vs. the City of New Orleans, was *locus publicus* as a portion of the public levee of this city, dedicated to the common use of the inhabitants of the city, to serve the public purposes of a levee

and landing place for the sugar and molasses brought to this port by steamboats and other vessels navigating the Mississippi river; and if the jury further find that in 1869 the City of New Orleans leased said spaces for the term of twenty-five years, under ordinances of the City Council and the contract with the lessees that they should erect over said spaces sugar sheds for the accommodation and protection of the aforesaid sugar and molasses landed from said steamboats and other vessels, the lessee to have the right to collect charges upon the sugar and molasses deposited under said sheds, for and in consideration of the accommodation and protection afforded by said sheds to said sugar and molasses, the city to be paid a percentage of said dues annually, and the sheds to revert and belong to said city at the end of the lease as appears by the said ordinances and contract in evidence, a copy of which is herewith filed made part of this bill; and if the jury find that said sheds were so constructed, and at and before the date of said adjudication, ever since the year 1869, the said spaces of ground and sheds were used for said purposes and for no other purposes; then the jury are instructed that the aforesaid right of reversion of the City to said sheds erected over said *locus publicus* was not liable to be seized and sold on execution for the debts of the City, and the seizure and adjudication of said right of reversion was illegal and passed no title to the purchaser.

The instruction requested and refused, stated correctly the legal proposition before the jury in regard to the immunity from seizure of the reversionary right of the city, at the end of the lease, to the sheds erected by permission of the City upon the levee, and the refusal to instruct, in effect, told the jury that the erection of the sheds on the levee for public purposes under the ordinance and lease of the City, made these sheds standing on the public levee for the uses of commerce, and the right

of the city thereto, private property, so as to subject the sheds and reversionary right of the city to seizure and sale for the debts of the city.

4th. That the Court erred in charging the jury that it was lawful for the City to withdrawthe space of ground in controversy from public use, and make it private property, while it was a *locus publicus* when in fact the city has no such right nor is there any such sanction in the decisions of the Louisiana Courts or in the legislation of the State.

5th. The City has no title to a public place, but only the right of administration for the public use, of the ground in controversy, a portion of the public levee and it was error for the Court to charge the jury that the fee to the ground was in the City, although qualified by the charge that the use was in the public.

6th. The Court erred in its construction of the lease exhibited by the portions of the charge, to wit: "That it gave the grantee or lessee the exclusive right and undisturbed permission of the spaces and sheds," although accompanied with the qualification, "for the purpose of storing sugar and molasses;" "that there was no requirement or condition requiring tne lessee to receive up to the capacity of the sheds the sugar and molasses of any person offering or which prevents any discrimination—*i. e.*, he may store the products of one and refuse those of another;" that the contract reserves a royalty as a rent;" "that the permission thus granted is to continue twenty-five years;" "that the contract protected the city by the provision that the sheds should not be located nearer than one hundred and fifty feet from the present wooden work or wharves," all these portions of charges presented the lease to the jury as a grant or absolute conveyance by which the City had granted

the levee for private purposes and thereby made the public levee of New Orleans private property, when in fact the City had merely leased for a term the sugar landing to secure the erection of sheds thereon in aid of the municipal purpose "to afford shelter to the sugar and molasses! received at this port," all the stipulations in the lease with reference to the shelter charges to be paid on the sugar and molasses, the proportion thereof to accrue to the City, and other stipulations being incidental to the municipal purpose proposed by the ordinance and lease, these portions of the charge being erroneous and misleading in not exhibiting the real character of the lease and in presenting it to the jury as an alienation and conversion of the public levee into private property.

7th. The Court erred in instructing that the execution of the contract, its acceptance by the lessee and possession under it by the lessee changed, the destination of the property was a withdrawal from public use, made it private property held by the city for its own use, not that of the public, and made its *reversion* liable to seizure on the part of the creditors of the City, when in fact the lease of the public levee to secure sheds for the public purposes to which the levee is devoted, constitutes no change in the destination of the levee, nor a withdrawal of it from public use, or warrants in any manner or in any degree the conclusions in that regard announced in the charge and which the jury followed to the prejudice of the plaintiff in error.

8th. **That the Court erred in charging the jury that the execution of the contract by the grantee or lessee, his entering into possession at the time of its execution and since remaining in possession under the contract, changed the destination of property – *i. e.* the spaces of ground in controversy—was such a withdrawal of it from public use, as makes it property held by the City for its own use and not of the public and makes the property liable to seizure for the debt of the City.**

The error being, that the ground on which the sheds were erected being *locus publicus* the sheds erected on the ground for the public purposes to which the ground was devoted, was impressed with the same character. The lease, acceptance and possession of the lessee did not change the destination of the property or withdraw it from the public, or make it private property, or subject it to seizure as charged by the Court.

9th. The Court erred in charging that in the decisions of the highest tribunal of the State and in the act of the legislature, there was a clear recognition of the authority of the City to withdraw from public use the batture it deems no longer requisite to be held for the public use. The error being that there is no such legislative act, and no recognition of such asserted authority of the City.

ARGUMENT.

The space of ground between the front row of houses of the City of New Orleans and the Mississippi River, was dedicated to public use as the *quai* or levee, at and before the cession of Louisiana to the United States. The batture or alluvion formed by the river, has added to the space, but its character derived from the original dedication is preserved. 7th Peter's Report pp. 717, 718, 735, 736. The ground in controversy is within this space. The character of this ground between the front row of houses and the Mississippi

River has been the subject of judicial examination in this Court, as well as in the Courts of the State. The decisions both of this Court and of the State, have recognized and firmly established that the ground was *locus publicus*. Civil Code, articles 449, 450, 454, 458. See De Armas vs. New Orleans, 5th Louisiana Reports, pp. 132, 175. Municipalty vs. Hopkins, 13th Louisiana Reports, pp. 328, 331. The United States vs. New Orleans, 10th Peter's Reports, p. 710, 717, 718.

There is no question that the ground in controversy was a public place, and in public use as the levee or landing for the products brought to New Orleans by steamboats and other vessels. The bill of exceptions and the plans of the City from 1728 show that the ground was *locus publicus* and the charge concedes that character to the ground down to 1869. At that date, the charge assumes that the ground was withdrawn from public use and became private property. This asserted withdrawal of the ground from the public, is the main issue in the case. See the bill of exceptions, Record pp. 25 charge, charge pp. 26, 27, 28.

The Counsel for the City requested the Court to charge that the City without authority from the State, could not change the character a public place. This charge the Court refused, to which refusal exception was taken. The Court on the contrary, charged that it was lawful for the City to

withdraw property from public use, the Court stating there was a clear recognition of the right of the City to withdraw the batture, in the jurisprudence and legislative act of the State, and to this charge the City excepted. This refusal to charge and the charge as given, are assigned in the 1st, 4th and 9th assignments of error and as involving the same question will be considered together.

It is true, there is a statute of the statute of the State which authorizes the riparian proprietor to sue the corporation for the batture in front of his property, whenever the batture formed is more than necessary for the public use. Revised Statutes of Louisiana, S. 318. If the City of New Orleans were the riparian proprietor of the public levee of the old city proper, then if it had withdrawn from public use the ground on which the sugar sheds rest, it might be deemed that the withdrawal made the ground private property, as the City could not sue itself. The statute, however, has no application whatever, because the City is not the proprietor of any part of the levee or space on which, or the batture in front of it, the sugar sheds stand. The dedication of the whole of the space to the public use and the exclusion of the city from any title to any part of the space, is firmly established, as shown by the decision of this Court and of

the Supreme Court of the State, already cited, and especially by the emphatic language in 5th Louisiana, p. 174.

Again, the present City charter (that of 1882 contains a provision authorizing the City to lay off and sell in lots or squares, from time to time, so much of the batture as may not be requisite for the public use. If the City in 1882 or since had sold the ground on which the sugar sheds are placed, the legislative act could probably have been invoked as the requisite authority from the sovereign. But this provision was inserted in the City charter for the first time in 1882, and has no application to this controversy for the obvious reasons that the statute was not in existence when the lease of the ground in controversy was made, and next because the city has sold no batture. See City Charter Acts of 1882, p. 21, S. 8. This provision of the City charter of 1882, is simply confirmatory of the instruction asked by the City and refused: that without legislative authority the City could not make private property of the levee or batture dedicated to public use.

The City of New Orleans is a political corporation, the creature of the Legislature. It can exercise no power not conferred by its charter or the general law of the State. Of public things, that is the streets, the public squares, the levees and other public places dedicated to public use, the

City has only the right of administration to secure the public uses to which these *loci publici* are devoted. Thus, the city charter in force, when these sugar sheds were erected conferred upon the City the power to regulate and make improvements to streets, public squares, wharves and other public property, and all other power with respect to such places was withheld The absence of any power of alienation of the city over public places, has received a striking illustration in the cases that have already arisen in regard to this very ground between the houses and the river. The City undertook to sell some property within this space. Thereupon, a contest arose as to the title to the ground, and that contest provoked the decision of this Court already cited from 10th Peters and also decisions of the Supreme Court of the State. All the decisions recognized that the ground was *locus publicus* by reason of the dedication at and prior to the time of the cession. Pending the contest, the Legislature of Louisiana ratified the sales. It was held by the Supreme Court of Louisiana, that the destination of the ground as a public place was made by the sovereign power, and the right to change that destination whenever the public interest requires, is vested in the same power, hence, the Court held that the disposition of the proceeds of the sales, by an act of the Legislature, was equivalent to an original au-

thority on the part of the State or sovereign to make the alienation. See 13th La. Reports, p. 332. This decision and a line of others with reference to the space involved in this controversy have firmly established that the sovereign—*i. e.*, the State—alone can change the character of a public place, affirmed in the instruction asked by the City and refused by the Court, and that the City, without legislative authority, could not withdraw from public use and make private property the ground on which these sheds rest. See Civil Code of Louisiana, articles 449, 450, 453, 454, 458, city charter of 1870, session acts, pp. 30, 35, S 12, paragraph No. 2; Shepherd vs. Third Municipality, 6th Robinson's Louisiana Reports, p. 349; Carrollton Railroad vs. Winthorp, 5th. Louisiana Annual Reports, p. 36; De Armas vs. New Orleans, 5th Louisiana Reports, p. 132, *et seq.*, and 9th Peters, p. 224; New Orleans vs. Hopkins, 13th Louisiana Report, p. 331; The United States vs. New Orleans, 10th Peters, pp. 662, 710, *et seq.;* Delabigarre vs. Municipality No. 3, 3d Louisiana Aunual Reports, p. 230; 8th Louisiana Annual, p. 149.

It results, therefore, that the instruction asked by the City and refused by the Court that the City, without legislative authority could not make private property, the public levee, dedicated to public use, was entirely correct; should have been given to the

jury; that the court erred in refusing the instruction, and in instructing on the contrary, that it was lawful for the City to withdraw the ground in controversy and that the legislative act and the jurisprudence of the State recognized the right of the City to withdraw batture, and it follows that the first, fourth and ninth assignments of error on this subject must be maintained.

The second assignment of error is to the refusal of the court to charge that the erection of the sheds for the purposes disclosed by the ordinance and lease, did not change the character of the spaces of ground in controversy as *locus publicus* and make said spaces liable to seizure and sale for debt.

The eighth assignment relates to the charge of the Court that negatived the instruction asked, and affirmed that the sheds had become private property.

The sixth assignment is, those portions of the charge which particularize the parts of the lease that in the view of the Court sustained the conclusion announced to the jury, that the lease and its execution changed the levee from *locus publicus* to private property.

The third assignment is, the refusal of the Court to charge that the reversionary right of the City to the sheds at the end of the lease, like the levee it

self, on which the sheds were placed, was not subject to seizure.

The seventh assignment is, the instruction that the reversion could be seized. If the levee itself, on which the sheds were placed for the public purposes was *locus publicus* to shelter goods landed on the leve, it would seem to follow the sheds were also exempt. The charge subjected to seizure both the levee and sheds. Hence, the proposition that the erection of these sheds, under the ordinance and lease, did not change the destination of the levee, or subject the levee or sheds to seizure, is the basis of the 2d, 3d, 6th, 7th and 8th assign ments, will be considered together.

It is submitted the City could not withdraw the levee from public use. The proposition has been discussed in considering the first, fourth and ninth assignments of error. But if the City had had the power, can it be maintained that the erection of these sheds on the levee under the authority of the Common Council to subserve the public purposes disclosed by the ordinance and lease, produced the remarkable consequence of making private property, the *locus publicus* covered by the sheds. This result the charge given by the lower court affirms. That no such result was accomplished, is maintained by the instruction asked and refused by the court. The lease and ordinance are before this court

attached to the bill. The levee of New Orleans is used to receive sugar, cotton, molasses and the products brought to the city by the commerce of the port. It is a municipal function to afford facilities so as to promote and invite this commerce. To put sheds on the levee to protect merchandise is specifically mentioned as a municipal function in the present city charter. Acts of 1882, p. 21, section 8. This ordinance and lease, are to be viewed in connection with this function of the municipal government. The title of the ordinance is an apt statement of the purpose and whole purpose of the ordinance. The ordinance is entitled to provide for the shelter and protection of sugar and molasses received at the port of New Orleans. Is it possible that there lurks under this title an alienation of the public levee, so essential to the commerce of the city, and an actual conversion of the levee into private property, as is affirmed by the Circuit Court in the charges it gave, and with equal emphasis by implication in the charges refused? Suppose the City had put up these sheds at the expense of the municipal *fisc*, would any one maintain that the City thereby alienated the levee and made it private property? Is it sensibly different, that under the ordinance the contractors or lessees were to put up the sheds for public purposes, for the consideration of exacting for a fixed period charges upon the sugar and molasses sheltered by the sheds, the sheds themselves to re-

vert and belong to the city at the end of the lease. Conceding to the lessees the right to collect the charges for the term of the lease on the sugar and molasses, was only the mode by which the city secured sheds needed for the commerce of the port. Is it to be said that the mere putting up of sheds to subserve public uses made private property of the *locus publicus* on which the sheds were placed? Or is it the charges that the City authorized the lessees to collect on products landed on the public levee and sheltered under the sheds, that it is maintained have produced the effect of changing the character of the public levee of this City? The wharves that line our levee. like the sheds, are facilities to commerce. The wharves of our city are essentially public. All these wharves, as this court has had occasion to know, are constructed by lessees who charge wharfage dues. 121 United States Reports, 444. If the pretension in this case succeeds, it will next be contended that the public wharves of the city and the public levee on which they partly rest are private property, to be seized and sold for debts of the City. Surely, neither these sheds or the whaves or the levees on which they have been constructed, or the charges the lessees demand, can furnish any basis to maintain that the city of New Orleans has alienated the public levee, withdrawn it from the public and effected the transformation of *loeus publicus* into private property to be seized and sold for debt like any private estate.

The purpose of the shed ordinance was not to make any conveyance of title. If the ordinance to provide for the sheltering of products on the public levee, was what the charge of the Circuit Court supposes, the community, it is perhaps allowable to say, were utterly unsuspicious and inattentive to so unusual an appropriation to private purposes of the public levee. No one would dream of any such purpose in perusing the ordinance or contract. It is reasonable to suppose that any member of the City Council who voted for that ordinance, with its commonplace title, would have been appalled by the announcement that he had voted to sell out or alienate the levee. There is no word or line in the ordinance or contract usually employed when a conveyance of title is intended The levee is public, and under the ordinance and contract the levee and sheds were to be used for the public purposes to which the levee was devoted. This was all the Council proposed. The sheds were to shelter the sugar and molasses landed on the levee, and to this end no conveyance of title to property was needed. Surely none was intended. It was the exclusive right and privilege of using "the spaces and sheds for the public purposes announced in the ordinance that was conferred upon the contractors or lessee who was to put up the sheds. There is no conveyance of title to the property expressed or implied. The object in view, was utterly inconsistent with

any tranfer of title, for even the right of use conferred on the contractor was to cease and the sheds themselves to revert to the city when the lease ended. On any view of the purpose and language of the ordinance and lease, it must be deemed simply and utterly, incompatible with the intention, purpose and language employed, to hold up this ordinance and lease to put sheds on the public levee for public uses, and maintain that ordinance or lease, or both together withdrew the levee from the public or changed in any manner the destination of the levee and made it private property, as as was maintained by the Circuit Court.

The fifth assignment of error was to the charge that the fee to the ground in controversy, was in the City, while the use was in the city If the City was vested with the fee, the right of absolute disposition of the property was in the City. The fee was not in the city. The error on this subject in the charge, was in itself, enough to control the verdict and secure the reversal of the judgment.

The judgment in this case deprives the City of a large portion of the public levee. The conclusion of the Circuit Court, by which this result has been produced rests upon the effect given by that Court to the ordinance and lease to put sheds on the levee for the accommodation of commerce. It is believed the interpretation placed by the Circuit Court

upon the shed ordinance and lease, cannot receive the sanction of this court. It is submitted with equal confidence that the propositions of law announced in the charge of the Circuit Court, and set forth in the assignments of error cannot be supported.

The plaintiff in error respectfully submits the judgment should be reversed and rendered in favor of the City of New Orleans, or the case remanded for further proceedings, in accordance with the opinion of this court.

Respectfully submitted,

CARLETON HUNT,
HENRY C. MILLER,
Of Counsel for the City of New Orleans.

APPENDIX.

MAYORALTY OF NEW ORLEANS,
CITY HALL, August 15th, 1869.

No. 1628, N. S.

ORDINANCE, (MADE PART OF THE BILL OF EXCEPTIONS,)

To provide for the shelter and protection of sugar and molasses received at the Port of New Orleans.

SECTION 1. Be it ordained by the Common Council of the City of New Orleans, That Francis B. Fleitas shall have and enjoy for the period of twenty-five years, the exclusive right and privilege of using the public spaces on the levee in the Second District of this city, between Customhouse and St. Louis streets, commonly known as the Sugar Landing; said spaces being designated on a plan of the City Surveyor, to be submitted to the Committee on Streets and Landings, on or before the 15th day of September, in the year 1869, for the purpose of erecting and constructing thereon fireproof sheds, for the reception and shelter of sugar and molasses, according to the plans and specifications of the City Surveyor on the day aforesaid, which sheds, with such arrangements for the transaction of business as may be convenient, are to be constructed on or before the first day of November, 1871; unless the construction be interfered with or prevented by extraordinary accident or calamity,

from which time said privilege is to commence to run; provided, that said Fleitas, immediately after the passage of this ordinance, shall have the right to enter upon and use the said spaces for the purpose of construction as aforesaid.

SEC. 2. Be it further ordained, etc., That the terms and conditions upon which said right and privilege are granted are the following:

1st. Said sheds are to be erected with such accommodations and conveniences for the transaction of business as may be necessary, by said Fleitas, at his own cost and free of expense to the City of New Orleans; and during the existence of said privilege he is to keep said sheds in good order and repair at his own expense.

2nd. Said Fleitas is allowed to charge, during the term said privilege is to last, under the provisions of this ordinance, a sum not exceeding twenty-five cents on every hogshead of sugar, and fifteen cents on every barrel of molasses sheltered under said sheds; and no other charge is to be made unless the packages aforesaid, after being under cover, shall change hands; then he is allowed to charge each and every time such packages change hands while under cover, fifteen cents for each hogshead of sugar and five cents for each barrel of molasses, at the time of transfer; provided, that this last mentioned charge is to be paid by each transferree or purchaser, and shall not be made when the sugar or molasses transferred or sold shall be removed by such transferree or purchaser on the same day he acquired title; provided further, that sugar and

molasses in other packages than hogsheads and barrels shall be subject to the pro rata charges

3rd The said Fleitas shall pay to the City of New Orleans, as a consideration for said privilege, during the term aforesaid, ten per centum of the gross amount of charges realized for shelter on each hogshead of sugar and each barrel of molasses placed under said sheds; the said per cent. to be paid quarterly, on statements rendered under oath to the Treasurer of the City of New Orleans; provided, that said sheds, and the revenues or income derived therefrom, or said privilege, shall not be subject to any municipal taxation whatever, during the existence of said privilege.

4th. In addition to the above consideration, the said sheds, at the expiration of said term of twenty-five years, are to be appraised at their cash value in the manner following: One appraiser to be appointed by the said Fleitas, or his representatives, successors or assigns, and the other by the City of New Orleans. In case of disagreement, the two thus selected shall call in a third disinterested person as umpire, and the appraisement thus made shall be conclusive and binding on all parties, and the City of New Orleans shall have the option to take said sheds at one-half of said appraised value, or of extending the privilege herein granted on the same terms as those specified, for the further period of fifteen years; except that at the expiration of said fifteen years said sheds are to revert to the city in full ownership, free of all cost. In case the City of New Orleans, within three months after

expiration of said twenty-five years, shall fail or refuse to appoint an appraiser, it shall be considered as having exercised the option to extend the privilege aforesaid for fifteen years longer; and in case the said Fleitas, his representatives, successors or assigns shall, within one month after the city shall have appointed its appraiser, fail or refuse to appoint an appraiser on his behalf, the City of New Orleans shall have the power of appointing two additional appraisers, whose appraisement shall be final; and said Fleitas shall receive one-half of the appraised value of said sheds from the city. On the presentation of the decision of the appraisers provided for in this clause, and on payment of one-half of the said appraised value, the sheds and spaces on which they are erected, as aforesaid, shall be surrendered and transferred to the City of New Orleans.

SEC. 3. Be it further ordained, etc, That the City of New Orleans hereby guarantees to said Fleites, his representatives, successors or assigns, during the term of this privilege, and its extension, the following:

1st. The undisturbed possession of said public spaces and the sheds thereon erected.

2nd. That the present landing for sugar and molasses shall remain where it now is, and as designated on the plan aforesaid.

3rd. That no other landing for sugar and molasses shall be established or allowed for the city or port of New Orleans.

4th. That no other privilege for the reception

and shelter for sugar or molasses shall be granted by the city.

SEC. 4. Be it further ordained, etc., That in case the sheds erected under the provisions of this ordinance should not be of sufficient capacity to meet the demands of increased production, or the requirements of commerce, the said Fleitas shall have the right to increase the number of sheds, said additional sheds to be erected on such spaces as the city may designate, and on such terms as may be agreed on; provided, that if said additional sheds are erected within ten years from the 1st of November, 1871, the cost thereof is to be paid by said Fleitas, his representatives, successors or assigns, and said additional sheds are to revert to the city at the expiration of twenty-five years from the date of construction, on the same terms in regard to appraisement, and the option to extend the privilege of using the same, as if the said additional sheds were originally constructed under this ordinance shall be considered applicable to them, in the same manner and to the same extent as they are herein applied to the original sheds.

SEC. 5. Be it further ordained, etc., That said Fleitas shall give security in the sum of fifty thousand dollars, for the faithful performance of the stipulations herein contained.

SEC. 6. Be it further ordained, etc, That the wharfinger shall have the right, at any time when the levee is encumbered, to enforce the now existing regulations.

SEC. 7. Be it further ordained, etc., That the sheds shall not be located nearer than one hundred and fifty feet to the present wooden work of wharves.

SEC. 8. Be it further ordained, etc., That if at any time the city shall desire to open or extend any street, that the privilege hereby granted shall not in any manner prevent said street from being opened or extended.

SEC. 9. Be it further ordained, etc., That all ordinances and parts of ordinances inconsistent or conflicting with the provisions of this ordinonce be and the same are hereby repealed, and this ordinance shall take effect from and after the date of its promulgation.

[Signed] G. PANDELY,
President Board Assistant Aldermen.

[Signed] LOUIS A. WILTZ,
President Board of Aldermen.

Approved August 14, 1869.

JOHN R. CONWAY,
Mayor.

(OFFICAL.)

MAYORALTY OF NEW ORLEANS,
CITY HALL, May 8, 1878.

No. 4492, Administration Series.]

AN ORDINANCE

Amending No. 1528, New Series, entitled "An Ordinance to provide for the shelter and protection of sugar and molasses received at the port of New Orleans."

Whereas, It has been found advisable, by and with the consent of the New Orleans Sugar Shed Company, to change the tariff under which they have been carrying on business by modifying the same as herein below effected, and fixing a permanent list of charges, to which all persons using said sheds are to conform; therefore,

SECTION 1. Be it ordained by the Mayor and Administrators of New Orleans, in council convened, That the second paragraph of Section 2 of Ordinance No. 1528, New Series, be amended and reenacted so as to read as follows: The New Orleans Sugar Shed Company, as transferee and successor of Francis B. Fleitas, shall be allowed to charge, during the term the privilege granted by this ordinance shall last (under the provisions thereof), a sum not exceeding forty cents for every hogshead of sugar and fifteen cents for every barrel of molasses, sheltered or stored under said sheds, for each month or fraction of a month that it shall be sheltered or stored; and one charge, not exceeding ten cents for each hogshead and five cents for

each barrel for labor in receiving, assorting, storing and delivering the same, and no other charge shall be made for shelter, storage or labor, unless the packages aforesaid, after being under cover, shall change hands or owners, in which case the said charges for shelter or storage as aforesaid shall, as to the transferree or purchaser, be computed from the day of sale or transfer; provided, that no charge whatever shall be made against the transferree or purchaser on the same day he acquired title; *provided further*, that sugar or molasses, in other packages than hogsheads or barrels, shall be subjected to pro rata charges for shelter, storage and labor.

SEC. 2. Be it further ordained, etc., That the bonus of ten per cent, pursuant to paragraph third of section second, shall be paid on the gross receipts for shelter and storage in any manner obtained by said Company.

SEC. 3. Be it further ordained, etc., That sugar and molasses landed at the places set apart for the sugar landing, and not left thereon in contravention of city ordinances, shall not be placed under the sugar sheds against the consent of the owners; but nothing herein contained shall be construed to affect paragraph 2 of Section 3 of said Ordinance No. 1528, New Series.

SEC. 4. Be it further ordained, etc., That the Mayor of the City of New Orleans be and he is hereby authorized and directed to receive the assent of the said Sugar Shed Company to the above modification of their charter or contract.

SEC. 5. Be it further ordained, etc., That all city laws and ordidances contrary to and in conflict herewith be and the same are hereby repealed, and that this ordinance shall go into effect from and after its passage.

Adopted by the Council of the City of New Orleans, May 7, 1878.

CONTRACT AND SPECIFICATIONS.

BE IT KNOWN, That on this day, the eighteenth of the month of August, in the year of our Lord one thousand eight hundred and sixty nine, and the ninety-fourth of the Independence of the United States.

Before me, William Joseph Castell, a Notary Public, in and for the Parish of Orleans, and official Notary for the city of New Orleans, duly commissioned and qualified, and in presence of the witnesses hereinafter named and undersigned, personally appeared.

The Hon. John R. Conway, Mayor of the city of New Orleans, herein acting in his said capacity, and

Francis B. Fleitas, of the city of New Orleans,

And the said Mayor, acting as aforesaid, declared by virtue of the authority in him vested by an Ordinance, No. 1528, N. S., passed by the Common Council of the city of New Orleans, entitled: "An Ordinance to provide for the shelter and protection of Sugar and Molasses received at the port of New Orleans, "he does, by these presents, grant, bargin

and confirm unto said Francis B. Fleitas, and contract with him as follows:

That said Francis B. Fleitas shall have and enjoy for the period of twenty-five years, the exclusive right and privilege of using the public paces on the levee, in the Second District of this city, between Customhouse and St. Louis streets, commonly known as the Sugar Landing; said spaces being designated on a plan of the City Surveyor, to be by him submitted to the Committee on Streets and Landings, on or before the 15th day of September, in the year 1869, for the purpose of erecting and constructing thereon, fire-proof sheds for the reception and shelter of sugar and molasses, according to the plans and specifications of the City Surveyor, on the day aforesaid, which sheds, with such arrangements for the transaction of business as may be convenient, are to be constructed on or before the first day of November, 1871, unless the construction be interferred with or prevented by extraordinary accident or calamity, from which time said privilege and right is to commence to run; Provided, That said Fleitas, immediately after the passage of said ordinance, shall have the right to enter upon and use the said spaces for the purpose of construction aforesaid.

That the terms and conditions on which said right and privilege are granted are as following:

1st. Said sheds are to be erected with such accommodation and conveniences for the transaction of business as may be necessary by said Fleitas, at

his own cost, and free of expense to the city of New Orleans, and, during the existence of said privilege he is to keep said sheds in good order and repair at his own expense.

2d. Said Fleitas is allowed to charge, during the term said privilege is to last, under the provisions of said ordinance, a sum not exceeding twenty-five cents on every hogshead of sugar and fifteen cents on every barrel of molasses, sheltered under said sheds, and no other charge for shelter is to be made unless the packages aforesaid, after being under cover, shall change hands, then he is allowed to charge each and every time such package changes hands, while under cover, fifteen cents for each hogshead of sugar and five cents for each barrel of molasses at the time of transfer; provided, that this last mentioned charge is to be paid to each transferee or purchaser, and shall not be made, where the sugar or molasses transferred or sold shall be removed by such transferee or purchaser on the same day he acquired title; provided, further, that the sugar and molasses in other packages than hogsheads and barrels shall be subject to pro rata charges. That in case the sheds erected under the provisions of said ordinance shall not be of sufficient capacity to meet the demands of increased production or the requirements of commerce, the said Fleitas shall have the right to increase the number of sheds, said additional sheds to be erected on such spaces as the city may designate, and on such terms as may be agreed on; provided, that if said additional sheds are erected within ten years from the first of November, 1871,

tho cost thereof to be paid by said Fleitas, his representatives, successors or assigns, and said additional sheds are to revert to the city at the expiration of twenty-five years from the date of construction, on the same terms in regard to appraisement and the option to extend the privilege of using the same as if the said additional sheds were originally constructed under the said ordinance, and all the terms and stipulations of said ordinance shall be considered applicable to them in the same manner and to the same extent as they are herein applied to the original sheds.

That said Fleitas shall give security in the sum of fifty thousand dollars for the faithful performance of the stipulations herein contained

That the wharfingers shall have the right, at any time when the levee is encumbered, to enforce the now existing regulations.

That the sheds shall not be located nearer than one hundred and fifty feet to the present wooden work or wharves.

That if at any time the city should desire to open or extend any street, that the privilege hereby granted shall not in any manner prevent said street from being opened or extended.

The said Fleitas, hereby binding himself, his heirs, executors or assigns, to execute the above and foregoing contract in accordance with the said Ordinance No. 1528, N. S., and in accordance with the plans and specifications to be hereafter prepared by the City Surveyor as aforesaid, binding himself in all respects to comply with all the stipulations